THE PRACTICK PART

OF THE LAW:

Shewing the Office of a

COMPLEAT ATTORNEY

In the full Proſecution of any Action, whether Reall, Perſonall, or Mixt; (from the very Originall to the Execution) in all Courts: with the exact Fees of all Officers and Miniſters of the Courts.

TOGETHER

With ſpeciall Inſtructions

for the Solicitation of any Cauſe in *Chancery*, or elſe where, relating to the preſent Government; being Uſefull for all Men.

The Third Impreſſion Corrected and amended. With an exact Table, wherein are contained all the principall matters in the whole Book.

LONDON.
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TO THE READER.

Reader,

HAVING obſerved the many Errours daily committed through the miſtake of the nature of the Action to be Sued, and conſequently, as well the miſgrounding of the Action, as the undue proſecution thereof, to the utter loſſe of many a Cauſe, hath put my intentions on work to give thee ſome light in ſuch wayes, where either thou doſt voluntarily go to purſue thy right, or art Involuntarily driven to defend thy right: To that purpoſe was this Compoſure undertaken, wherein thou ſhalt finde the whole progreſs of the Law in the Practicall part: So that whether thou haſt buſineſs of thine own,

or on the behalfe of another, hereupon all occaſions thou mayſt finde Inſtructions for a due and full proſecution thereof; there being ſcarce any Actions, Reall, Perſonall, *or* Mixt, *in what Court ſoever, but its Nature, Progreſſe Judgement, and Execution is here explained, with the duty of all Officers,* Judiciary *and* Miniſteriall; *as alſo the juſtifiable Fees and Allowances of the* Prothonotaries, Maſters *of Offices,* Secondaries, Clerks, Attorneys, Sheriffs, Under-Sheriffs, Bailiffs *of Franchiſes, and preſcribed Liberties, the Practiſe of the high Court of* Chancery, *the Fees of the* Six Clerks, *&c. All which being methodically diſpoſed, with an exact Table to every particular, will, I hope, render thee a benefit worthy of thy kinde acceptance.*

Farewell.

The Compleat Attorney.

Being full and exact directions for all manner of Proceedings at Law, in all Courts whatsoever: Together with all Fees incident thereunto.

THE Office of an Attorny requires much knowledg both of the Theorique and Practick parts of the Law. The one is to be gained out of the body of the Law, and cannot be expected to be ascertained in this small tract.

For the better enabling of him to the latter is this ensuing discourse intended, wherein we shall begin with the Court of *Common-Pleas*, as being of the largest Extent, in relation to the multiplicity of Actions, both reall, personall, and mixt, properly incident to that Court, wherein all persons of the Nation, either as Plaintiffs or Defendants, are more or lesse concerned.

This Court consists of a Chief Justice, and three other Judges.

The subordinate Officers are.

The *Custos Brevium*, or Keepr of the Writs.

Three Prothonotaries (one of which was antiently, incident to the *Custos Brevium* for the time being) who by themselves & their Clarks, draw all Pleadings and enter them and exemplifie and record all common Recoveries.

The Clark of the Warrants, who entreth all Warrants of Attorney, and inrolleth all Deeds acknowledged before the Juſtices of the Court.

Philizers, who make all manner of Mean proceſſe upon originall writs before *appearance.*

The Clark of the Eſſoynes, who doth enter the Eſſoines and exceptions in all Actions wherein Eſſoines lie, and prepareth and marketh all the Rolls uſed for the Court.

The Clark of the Outlawries, who maketh the *Capias utlagatum*, upon the return of the exigents brought in unto them: this Office is properly incident to the Attorney Generall for the time being.

The Clark of the Superſedeas who makes Writs to ſuperſede the Outlawing of perſons granted by Letters Patents under the great Seal of *England.*

The Exigenters who are in number, and make the Writs of Exigents and Proclamations, in order to Outlawry upon the *plures Capias* brought in unto them.

The Clark of the Juries who makes the Writs of *Habeas Corpora*, and *Diſtringas Jur.* for the tryall of Iſſues.

The Chirographer, who doth make the Indenture of Fines levyed, and hath many ſubordinate Clarks for the ſeverall Counties where the Lands lie.

The Clark of the Kings-ſilver, ſo antiently called who doth enter on record the Money which the State is to have upon Fines, for the Poſt-Fines, according to the yearly value of the land, as the ſame is rated on the Writs of Covenant.

The Clark of the Errors who makes all *Superſedeas* upon writs of Errour, and doth tranſcribe the Records out of the Treaſury, belonging to the Common Bench, into the Upper Bench.

The Keeper of the Treaſury, who hath the keeping

of the Rolls entered of record in the Court, and the making forth of Copies and Exemplifications thereof and alſo of all records of *Niſi prius*.

The Proclamator of the Court; the Keepor of the Court; The office of Inrollment of Fines and Recoveries erected by Statute.

Foure Cryers, or Tipſtaves, Subſtitutes to the Proclamator.

The Warden of the Fleet, who by himſelf or his Deputy is to attend the Court, that Priſon being proper for all Commitments out of that Court.

The pleaders are all Sergeants of the Coife, none under that degree being allowed to plead in that Court.

The Attorneys are very many, being not limited to any ſet number; antiently they were ſuch as either had ſtudied the Law for ſome years in ſome Inne of *Chancery*, where was uſally their reſidence, or had ſerved for the ſpace of 6. or 7. years, with ſome able Attorney of the Court whereby they come to be very knowing in the practiſe of the Court, the better to manage their Clients Cauſes with ability and integrity, to the honour of the Court, and their owne credite.

At the time of their being admitted Attorneys, there is an Oath adminiſtred unto them as follows.

YOu ſhall doe no falſhood, nor conſent to any to be done in the Court; and if you know of any to be done, you ſhall give knowledg thereof to my Lord Chiefe Juſtice, or other his Brethren, that it may be reformed. You ſhall delay no man for lucre or malice, nor ſhall encreaſe no fees, but be contented with the old accuſtomed fees. You ſhall plead no forreign plea, nor ſue no forreign ſuites unlawfully to hurt any man but ſuch as ſhall ſtand with the order of the Law and your Conſcience. You ſhall

ſeale all ſuch Proceſſe as you ſhall ſue out of this Court, with the Seale thereof, and ſee the Kings Maieſtie. and my Lord Chiefe Juſtice diſcharged of the ſame. You ſhall not wittingly nor willingly ſue, nor procure to be ſued, any falſe ſuite, nor give aide or conſent to the ſame, on paine of being expulſed from the Court for ever. And further, you ſhall uſe your ſelfe in the office of an Attorney within the Court according to your learning and diſcretion, So help you god.

Having taken his Oath, he is to pay the fees of Court incident thereunto, as followes.

Imprimis, to the Judges boxe, 20 *s.*

To the ſecondary of the Chiefe Prothonotary, who giveth the Oath, 12 *d.*

To the Cryers, Court Keeper, and other Officers 1 *s.*

Then muſt he have a note from the Prothonotary, in whoſe office he intends to enter, directed to the Clark of the Warrants, which is uſually made, as follows.

Of the Tearm of St. *Hillary* in the year, 1651.

T.D. Gent. ſworn in Court the 10 day of *February*, in the ſelfe ſame Tearm, in the office of Attorney of the Common-wealth of the Common Bench.

To which the Prothonotary ſubſcribeth his name.

Which note being delivered to the Clark of the Warrants, he enters the name into the Roll of the Attorneys names.

The Clark of the VVarrants hath for the entring thereof 4 *s.* and 4 *d.* for the Roll of that Terme, 4 *d.*

And ſo he ſtands charged to pay 4 *d.* for the future, ſo long as he continueth an Attorney of the Court for each Term.

The Attorney thus fitted for practiſe, he muſt be very

very carefull in taking right and due inſtruction from his Client, and informe himſelfe of whatſoever is materially incident to his Cauſe; that ſo he may know what manner of Action is moſt proper to be brought on the behalf of his Client, for a Cauſe once throughly weighed, and rightly grounded, goes on with a great deal of eaſe and ſatisfaction both to the Attorney and Client.

The Attorney ought to be throughly verſed in the nature of all ſorts of VVrits, as in the Regiſter, Terms of the Law, and other Books now extant.

To begin with Actions of Debt.

FIrſt, you are to take notice of your Plaintiffs name, and of his cauſe of action, whether it ariſe by Bond or Bill, which are called Specialties, or otherwiſe for arrears of Rent, VVares, Cattell ſold, or any other Chattels, or for worke or ſervice done, &c. If by Bond or Bill, you muſt take an exact note of the Defendants name, together with his addition preciſely as he is written in the Obligation or Bill, that ſo you may make your Originall and your other proceſſe to agree with the Obligation, otherwiſe it is Errour.

That done, you muſt make a ſhort note to the Curſitor, if in debt, as follows

London. ſſ. Command *I. C.* late of *London.* Gent. otherwiſe called *I. C.* of *L.* in the County of *H.* Gent. that juſtly, and ſo forth, he render T. B. 40 l. &c. Originall returnable 15. dayes after *Eaſter.*

Which being done, you muſt carry your note or notes to the Curſitors Office; and deliver it to that particular Curſitor who is for the County you lay your Action in, who maketh your Originall, and delivereth it you under Seal.

This Originall is your firſt Proceſſe, and is a Summons: and although it iſſue out of the *Chancery*, yet

it is made returnable before the Justices of the *Common pleas* at a certain return: And between the Teste and Returne of the same (as also in al other ordinary writ to be sued forth, and procured upon the same) must be 15 days at the least.

Note that this Writ may bear Teste out of the Term, because it is to be understood that the Court of *Chancery* is alwayes open.

All other Process sued forth at the Court of *Common pleas*, must bear Teste sometime within the Term, and in the name of the chief Justice of the same Court for the time being, and one writ is to bear Teste from the returne of another, as namely the *Capias* (which is the next Writ to the Originall, in an Action of Debt) form the return of the Originall, the *alias Capias*, from the return of the *Capias*, and the *Plures* from the return of the *Alias*, and the Exigent and Proclamation from the return of the *Plures*, & these are the severall Writs in order to an Outlawry.

The return of your Originall in debt is thus.

John Doe.

Pledges of prosecuting

Richard Roe.

The within named I. S. hath nothing within our Bayliwick whereby he may be summoned.

The answer of *R. B.* and

I. S. Sheriffs.

If there be two Defendants in the Originall, the Return must be thus.

The within named *I. C* and *D. L.* have nothing within our Bayliwick wherby they may be summoned. If there be more then two Defendants, then thus. I. C. and the rest of the Defendants within written, have nothing within our Bayliwick whereby they may be summoned.

Note

Note it is said (within our Bayliwick) because the Action lies in *London* where there are two Sheriffes, otherwise where there is but one Sherif you say (within my Bayliwick) and the like for all other Cities that have two Sheriffs & likewise the words (the answer of) are intended only where there is two Sheriffs, otherwise you barely recite the Sheriffs name and style at the bottome of the back of the Writ.

Your Originall being thus made and returned, you must deliver the same to the philizer of the County, City, or Shire, where your Action is laid, to have such further processe made thereon either, in suing to the Outlawry or otherwise, as the present Terme wherein you sue forth the same, shall by reason of the length or shortnesse of the time allow, observing the former rule of fifteen days betwixt the Teste and the return of every Processe

The ordinary and usuall process thereupon with the Philizer, are those formerly mentiond which hee maketh upon the Originall writ brought to him, for which you deliver him 4 d as payable to the *Custos brevium* for filing the Originall.

First, *A Capias*, for which you pay 10 d.

Secondly, An *Alias Capias* which costs 6 d.

Thirdly, a *pluries Capias* for which you pay 6 d.

The returns whereof are as follows.

The within named *J. C.* is not found within our Bayliwick.

And if more then two Defendants, then thus.

J. C. and the rest of the Defendants within written are not found within our Bayliwick.

The answer of R. B. *and* J. S. Sheriffs

BVt if you intend not to sue the Defendant to an Outlawry, but that his body may be easily and readily arrested then you need not proceed further then

to the *capias* onely, and deliver the same to the Under-Sheriff of the County, and procure a Warrant thereupon, and get him arrested by the Sheriffs Bayliffs, which is a great furtherance to your Clients cause, in relation to Tryall, and procuring Judgement.

Note that you are to pay 4 d. as a *post diem* for each of the aforesaid Processe which you bring not into the Philizer by the day of the return.

The two chiefe Termes wherein to commence Suits to the Outlawry, are *Easter* and *Michaelmas* Termes, they having in them the most returns, for if you begin in *Easter* you shall Outlaw the party, if he appear not in *Michaelmas* Terme, next following, and if you begin in *Michaelmas* Terme, you shall doe the like in *Easter* or *Trinity* Terme then next following.

Note that you may have an Originall Writ made returnable of a precedent Terme, upon bringing a Note to the Clerk of within the first week of the following Terme, but if you slack that time, you lose your advantage.

Antiently the course hath been, that if an Originall Writ be made against a Knight, Esquire, Gentleman of worth, or other substantiall Free-holder, that hath sufficient Lands and Tenements in the same County where the Action is laid, then ought a Summons to be returned by the Sheriffe of the County who is to execute it. And you cannot return that originall of Course by the return of (having nothing, *&c.*) For otherwise the Defendant, if he have sufficient in the same County, and he be returned. (to have nothing, *&c.*) may bring an Action of the Case, for disabling of him in his Estate against the Attorney for the Plaintiff, or against the Under-Sheriff of the County, who shall make such return,

to

to disable him upon a Summons; if he appeare not, you proceed by *Bone* and so to a distress, and if he appeare not upon the *Distringas*, you have an *Alias Distringas*, and so Distress upon Distress until he appear; but this manner of proceedings by way of Summons hath not been used of late.

Upon the making and suing forth of every originall Writ if the Debt or Damages therein specified do exceed forty Pounds; Then there is a certain Fine due for the same, to be paid, formerly to the King, now to the State, as followes.

Imprimis, from forty Pounds to a hundred Marks, payes 6 s. 8 d.

From a hundred Marks to hundred Pounds, payes 10 s. 0.

From a hundred Pounds to two hundred Marks, payes 13 s. 4 d.

From a hundred thirty three Pounds six Shillings and eight Pence to a hundred sixty six Pounds thirteen Shillings and foure Pence, payes 16 s. 8 d.

From a hundred sixty six Pounds thirteen Shillings and four Pence, to two hundred Pounds, payes 20 s. 0.

And so consequently for every hundred Marks more, payes 6 s. 8 d.

And for every hundred Pounds more, payes 10 s. 0.

If you begin in *Easter* Term, you may procure your *Capias* and *Alias Capias*, returnable in *Trinity* Term, and in *Trinity* Term sue forth your *Plures Capias*, Exigent, and Proclamation; if in *Michaelmas* Term you may sue forth the originall *Capias*, and *Alias Capias* returnable the same Term; and a *Plures Capias* returnable in *Hillary* Term then next following, and in the same Term procure your Exigent and Proclamation,

Note

Note that if you lay your Action in *London*, the Partie will be the sooner out-lawed, in respect of the Hustinge, being oftener there then elsewhere.

Now if the partie have sued out his Originall in *London*, and the partie live elswhere, and that he would have him more speedily arrested then by way of Outlawry upon the return (of the parties not being found *&c.*) By the Sheriff, he may have a *Testatum*, into the Countie where he liveth, to arrest him there; the fee of which Writ is twelve pence.

All the Writs before mentioned must be filed with the *Custos brevium*, either by your selfe or the Philizer, or else there will be Error in the proceedings.

The *Plures Capias* being orderly procured, sued forth and returned, must be delivered to the Exigenter of the Countie where the Action is laid, and he will make an Exigent, and proclamation thereupon.

The Exigent and Proclamation must be delivered to the under-Sheriff of the same Countie where the Defendant dwelleth, to be executed according to the form of a Statute, in that case made and provided, and according to the tenure and form of the said Writ.

The charge of a Suit to the Out-lawry are as followeth.

Doe ar. gainst *Roe.* } *Easter Tearm*, 1651.

	l	*s*	*d*			
For the Fine to the State,	0	10	0			
For the Original, *Past diem*, & Entry	0	1	5	}	*s*	*d*
For the *Capias* Seale and *Post diem*.	0	1	9	}	17	11
For the *Alias capias*, Seal, & *Post diem*,	0	1	5	}		
For the Attorneys fee,	0	3	4	}		

Trinity

Trinity Term following. l. s. d.

For the *Plures Capias*, Seale, and *Post diem*.	0 - 8 - 5	l.	d.
For the warrant of Attorney,	0 - 0 - 4	8	9
For the Exigent and Seale,	0 - 1 - 7		
For the return thereof,	0 - 1 - 0		
For the Attorneys fee,	0 - 3 - 4		
The sum totall is	1 - 6 - 9.		

If the Exigent be against several Defend. living in severall Counties, severall Proclamations must goe to the Sheriff of the severall Counties, which will increase the charge; And further take notice there must be of necessity five Countie days, between the Teste and the return of the Exigent, or else you must bee necessitated to sue forth another writ, called an *Alloca-tus*, from the said Exigenter, to be delivered to the said under-sheriff, to the great hinderance and charge of the Client; and your *Allocatus* must bear Teste with the returne of your former Exigent, and be returnable the next return, after the fifth Countie day and your Exigent and Proclamation must have one and the same Teste and return.

You must carefully examine all the aforesaid Processes, that there be no difference or variance either in the summes, names, or additions, from your Originall Writ, that so they may each Warant the other.

The same Terme that you sue forth your Exigent and Proclamation, you must then file a Warrant of Attorney (for the Plaintiff who is your Client) with the Clark of the Warrants, in failer whereof you commit manifest Error in the prosecution of your Cause,

Cauſe, to the great hindrance and hurt of your Client, and danger of your ſelfe, by incurring the forfeiture of ten pounds, by a ſtatute made in that behalfe.

The form of a warrant of Attorney is as follows, and muſt be ingroſſed in Parchment.

London. ſſ. A. B. puts in his place C. D. his Attorney, againſt T. F. lately of *London* Gentleman, otherwiſe called T. F. of S. in the County of *Glouceſter*, Gentleman, of a Plea of Debt: Thus upon ſpecialty.

In Action of Treſpaſſe thus.

Dorſet ſſ. G. W. puts in his place T. F. againſt I. L. late of *Blanford* in the County aforeſayd, of a plea of Treſpaſſe. And the like in other Actions.

The exigent and proclamation being returned, you muſt then file the proclamation with the *Cuſtos Brevium* and if you file the ſame or any other Writ there, before the return be paſt, or upon the return day, then you muſt pay nothing for filing the ſame; otherwiſe every Writ payes 4 *d.*

Well experienced Practiſers know how to ſave many of their *poſt diems*, by having their Writs made ready in an early manner.

In caſe of not filing your Writ or Writs, in or of the ſame Term they are returnable, they force you to pay when you file them with the *Cuſtos brevium*, for the Poſt *terminum* of them, which is 20 *d.* for every Writ, every Term the ſame is unfiled, except Exigents, for which you pay only one poſt *terminum*, which as aforeſaid, is 20 *d.*

It is very unſafe in relation both to your ſelfe and Client, to keep your Writs unfiled (the filing of them

them being the ſubſtantiall warranty for the proceedings had upon them) leaſt a Caveat be obtained from ſome of the Judges in that behalfe, which is called a *Ne recipiatur*.

The Exigent being returned by the Sheriff of the County, and you being willing to procure proceſs of outlawry againſt the Defendant to Arreſt him, upon the ſame he being outlawed, you muſt then carry the Exigent ſo returned, to the Clarke of the outlawryes, for the time being, and he will make you a VVrit or VVrits, into any County you ſhall deſire him, where you can any wayes diſcover the Party to be, or any Eſtate of his, either in Lands or Goods, yea into ſeverall Counties at one time; becauſe thoſe VVrits are as well on the behalfe of the King, as for the Plaintif.

There be two ſeverall VVrits of *capias Utlagat*. the one called a Generall *Capias utlagatum* being for the apprehending of the body of the Defendant only: The other Eſpeciall, being againſt his Body, Lands, and Goods.

You having now the Exigent in your hands, ready to file, I thought fit to let you know the accuſtomed Fees for ſuing the Outlawry out, and Proceſſe thereon.

The Fees of the *Capias Utlagat*.

THe filing of the Exigent with the Clark of the Outlawries in the ſame Term it is returnable, payes 1 *d*.

If it be with a *poſt Terminum* payes 20 *d*,
The Generall *Capias Utlagat*. payes 10 *d*.
The Speciall, payes 2 *s*. 4 *d*.
The ſeale of either, payes 1 *d*.
The fee of the Attorney ſuing it forth; 3 *s*. 4 *d*.

Severall ways there are to diſcharge and avoid the ſame as occaſion ſerves, whether the party be taken or otherwiſe.

The

The first and most usuall way is, to reverse it by Error, found in the return of the Exigent, which may be committed many wayes, and is not untrequent either by mistaking the County dayes, in not allowing sufficient time between any of them, or in misnaming of the person, or omitting or mistaking of the Sheriffs name to the same Writ or Return, or by words which will bear no signification, or otherwise, as Experience and Practise will better instruct you: And secondly by any Error to be found in the Return of the Proclamation, which may be committed many wayes, as aforesaid.

Likewise for want of filing the Proclamation with the *Custos brevium*, as also for want either of the Return or a due Return or Mis-entry, or mistakes, either in the Originall *Capias*, *Alias*, and *Plures*, afore recited.

For all which there must be diligent search with the *Custos brevium*, or in the other Offices where the proceedings haue been.

Upon the finding of any sufficient Error, either in those or any other the proceedings: Then the file of Writs, in which said matter of Error in Writ is filed, must be brought by the *Custos brevium* into the open Court, there to beseen and perused by one of the Judges of the same Court, and the Errors to be allowed, or disallowed, according to his discretion and Judgement.

Upon Reversall of an Outlawry for want of proclamation in all Cases, or for any other default, if the debt or damage amount to 20. *l.* or above, there must be speciall Bayle entred by the Defendant with Sureties to answer to the Plaintiffs suite, and pay the debt and damage demanded, or yeeld his body to Prison, if the Defendant shall be condemned in the Action, which Baile must be taken out into the Re-

membranc

membrance in the ſame Prothonotaries office, where the ſame is reverſed. And then if the party outlawed be taken, and arreſted, or fear to be ſo upon notice of an Exigent againſt him, he may have a Writ of *Superſedeas* directed to the Sheriffe of the County where he is, or feareth to be taken for his diſcharge, which writ is to be made and ſigned in the ſame Prothonotaries Office where the Outlawry was reverſed.

The Outlawry thus reverſed, the Defend. is bound by his Attorney to appear, and to accept of a Declaration at any time within two Termes then next following after the ſaid reverſall, and then to anſwer according to courſe of Law.

Upon the reverſall of every Outlawry, the Attorney ought to have a note or Certificate thereof from the Prothonotarie to the Clark of the Outlawry, that no further Proceſſe may be made againſt the defendant upon the ſame, and to ſee the Outlawry book diſcharged, for which he muſt pay 2 *s.* 8 *d.*

The Fees of the reverſalls according to the occaſions are uncertaine, but the uſuall and accuſtomed fees follow.

For ſearch and Copie of the Outlawry, 8 *d.*
For ſearch with the *Cuſtos brevium* for every particular Term you need to uſe, 5 *d.*
For carrying the bundle of Writs to the Hall, 2 *s.* 9 *d.*
For putting in the Bayle, 6 *s.* 4 *d.*
To the Boxe, 1 *s.*
To the Prothonotary for Entring the Reverſal upon inſufficiency of the Return, 8 *s.*
For the Judges fee, 4 *s.*
To the Clark of the Outlawries for diſcharging the booke, 3 *s.* 6 *d.*
For the *Superſedeas*, 2 *s.* 7 *d.*
For the allowing thereof with the Sheriff, 2 *s.* 4 *d.*

An

An Outlawry alſo may be reverſed, although there be no Error in return or Entries of the Exigent or Proclamation: and although the Proclamation be filed with the *Cuſtos brevium*; as namely, if that the ſame proclamation were not awarded according to the forme and effect of a Statute, in that Caſe provided, into the County, and the Defendant named of the Pariſh where he had been reſident; *infra annum & diem*, when next before the ſame Suite was begun, and commenced, or that the Defendant be miſnamed therein, in his Surname, Degree or Miſterie. And this Reverſall is to be done by way of a Plea, drawn by a Clark to that purpoſe; for which you ſhall finde precedents in the book of Entries, to which pleas the Attorney Generalls hand muſt be procured; but this way as being both very troubleſome and chargeable, is much out of uſe.

An Outlawry may be alſo reverſed by the Kings Generall pardon, which is uſually granted at every Parliament, if ſo be the Defendant were outlawed before the day thereby limited, or by a ſpeciall pardon, which muſt be done by way of plea, and *Scire facias* directed to the Sheriffe of the ſame County, wherein the action was firſt layed: And if the Sheriffe doe return a *Scire feci* upon the ſaid *Scire facias*; then you ſhall need but one Writ of *Scire facias*; if not, then you muſt have two returned with *Nihil*, &c. in this manner:

The within named A. C. (the Plaintiff) hath nothing within my Bayliwicke, by which I am able to make known unto him, nor is found in the ſame.

D. L. Knight, Sheriffe.

Theſe *Scire facias* are to be drawn by the Prothonotaries Clark, and then entred into a remembrance in the ſame office, and a *Superſedeas* made, and a Certificate alſo made as above from the Prothonotary to the

the Clark of the Outlawries that from thence-forth no further Proceſſe may be made againſt the Defendant, and alſo entered upon Record.

And note in this Caſe alſo, the Defendant muſt by his Attorney appear, and anſwer the Plaintiff in his Action, but no Bail need be put in.

The Fees thereof.

For the Copie of the Exigent.	3 *d.*
The two *Scire Facias* and Seales,	5 *s.* 2 *d.*
The Returns thereof,	8 *s.*
The filing of them,	2 *d.*
The taking out in the Remembrance,	1 *s.*
The Copies,	3 *s.* 4 *d.*
The Prothonotary,	5 *s.* 4 *d.*
The *Superſedeas*, and allowing thereof,	4 *s.* 11 *d.*
The Certificate,	1 *s.*
The Clark of the Outlawries,	2 *s.* 8 *d.*
The Attorneys Fee,	3 *s.* 4 *d.*

An Outlawry alſo may be reverſed by writ of Error upon Error in the proceedings, as the want of the Warrant of Attorney, the not filing of the originall, *Capias*, *Alias* or *Plures*, and then your Courſe therein follows.

In the firſt place you are to have a copie of the Exigent or *Capias Utlagat.* which is to be carried to the Curſiter of the County where the Action lyes, and where the Defendant is returned outlawed, to have a writ of Error made thereupon, which Writ muſt be brought under Seale to the Lord chiefe Juſtice of the Common Bench, or his Clark of the Errors for the time being, with the copie of the Outlawry, and thereupon the Clark of the Errors of the Common Bench makes a *Superſedeas* to the Sheriff of the County, where the Defendant either is, or feares to be Arreſted, for his diſcharge, and from him pro-

cure a Certificate to the Clark of the Outlawries (as formerly) the charge of the *Superſedeas* is 33 *s.* 4 *d.* beſides the ſearch and copie of the Outlawry. And in this caſe the Defendant by his Attorney muſt appear upon a new originall ſued out by the Plaintiffe within two Terms: And this is the moſt uſuall and ready way (though moſt chargeable) for diſcharging of an Outlawry (eſpecially in the Vacation) if the Defendant be either under arreſt, or fear to be arreſted; but bail muſt be put in, if the Debt or damages amount to 20 *l.* as in the like caſes before recited.

It's requiſite in this caſe the Attorney ſhould take mony of the Defendant for the Declaration, and his fee againſt the next Term, at the time of the delivery of the *Superſedeas* (eſpecially if the Defendant be not well known unto him) and a Warrant under his hand to appear, plead, or confeſſe the Action: for many times the Attorney is put to a great charge and trouble to finde out his Client.

Theſe are the generall and particular inſtructions and directions to ſue to the outlawry, and to arreſt thereupon, and how to reverſe the ſame both in the behalfe of the Plaintiff and Defendant; beſides which there are other wayes of ſuing by mean Proceſs, when they proceed no further then to the taking out of an Originall, and then make an arreſt upon the *Capias*; or in caſe the Party cannot be taken before the returne of the ſaid *Capias*, then you may take out a *Capias* by continuance, which coſts you 10 *d.* to the Philizer, and 7 *d.* for the Seale.

And having now dilated at large the ſeverall proceeds in actions of Debt, in order to Outlawry, or otherwiſe, & likewiſe the reverſall of ſuch Outlawries, whereby the Defendant comes to appear, it now reſts we ſhould ſhew how they may declare, and in what manner thoſe Declarations muſt be; But before we proceed

proceed ſo far, it will not be amiſs to inſert ſome few rules or obſervations as a guid for the Attorney, both in the taking of inſtructions, and drawing his ſeverall Declarations in other perſonall actions as follow.

IN actions of Debt, either upon ſpecialty, as Bond or Bill, or for Rent arrear upon a demiſe by Indenture or otherwiſe, or upon an action of Covenant, you muſt have recourſe to the ſeverall writings, by which you warrant your ſaid actions; and the circumſtance of time, either for the date of the ſaid writings, the place, the quantity of what Rent arreare, for what time, when Commencing and Ending, and what particular Covenant; if but one in an action of Covenant, you intend to inſiſt on for the laying of the breach aright, and likewiſe you muſt enforme your ſelfe how your Client came to be Entitled to the Debt, whether as Obligee, or by ſome aſſignment, by Letter of Attorney, or otherwiſe, as Executor or Adminiſtrator of the Obligee: And if for arrear of Rent, whether the party came to it by mean aſſignment or reverſion, in which Caſes you are to inform your ſelfe of the Attornment of the Tenant, and for what time the Rent is arrear, and look what right the immediate Leſſor or Leſſees have, the ſame, is in their aſſignes.

If Rent grow due by Leaſe-parol from year to year which is ſo called, in reſpect there is nothing under hand and ſeal, but barely by word of mouth, to ſignifie the Demiſe, you muſt know the time of the Demiſe, aſcertaine the thing demiſed the Terme, The rent and time of payment of it: The time of the Leſſees Entry, and what Rent is arrear by the Defendant.

If in Debt upon an Award.

YOu are to inform your ſelves of the Arbitrators names, the time of the Award made, and what was Awarded, and if you can get the Award it ſelfe, it is far better.

Note that if any under the age of one and twenty yeares, either in this or any other Action, commence Suit, he muſt come in by his Guardian in proper Perſon to be admitted, which coſts two ſhillings the Admittance; otherwiſe if the Defendant take notice of his Nonage, & that he appear not by Guardian but otherwiſe, the Defendant may plead it in Barre to his Action.

And now take ſome few inſtructions in other Actions, as Treſpaſs upon Aſſault and Battery, falſe Impriſonment, *&c.*

In the firſt place, take notice of the time, or any time after the Treſpaſs done, before the Teſte of your Originall of the Treſpaſs, by Aſſault and Impriſonment, and the place where (although I think neither of them Locall) together with the time, the Party remaineth Deceaſed or Impriſoned, and what it coſt him by way of Fine or otherwiſe, to be releaſed.

And note for the Aſſault of the Wife, Children, or ſervant, the Father and Maſter, as well as the ſervant, may bring an Action, for the loſs or hindrance he receives thereby.

For Treſpaſs either in Cloſes or Houſes, or chaſing of Cattell, or fiſhing where another man hath right, as followes: and firſt,

For breaking your Cloſe, the certainer you lay it, in naming the place, the time of the Treſpaſs done, and with what Cattell, and how long the Treſpaſs continued

continued and what Corn was conſumed and eaten up, or trodden down with the Feet, and what Graſs, and of what value; and it were to be wiſhed, in Relation to the ſaving much Charge, there were the ſame courſe taken in the Court of common Bench that is done in the upper Bench, that is, To aſcertain the place of the Treſpaſs done, by giving it his particular name and bounds, vvhich if done in the Declaration, vvould prevent pleading the common Barre and new Aſſignment, and this vvith much eaſe, by ſaying, (The Cloſe of *A.* called *C.* in *D.* he broke, *&c.*)

If any Treſpaſs done for chaſing of Cattell, you muſt lay the time and place of chaſing, vvorrying, and beating your Cattell, what Cattell, and hovv many they vvere, and vvhat you vvere damnified by it, either in Evves caſting their Lambs, or being torne vvith Doggs: or Kine in looſing their Milke, caſting their Calves, or Mares in the loſs of their Colts & the like.

An Action of Treſpaſs alſo lyes againſt one, for the reſcuing of his ovvne Cattell out of your hands, in caſe you are driving them to the pound, for Treſpaſs or othervviſe, or in caſe he breake the Pound vvhere you had Impounded them, and drive them avvay; in both vvhich caſes, you muſt ſhevv vvhat right you had to take them, either as damage-feaſant, or that you did diſtrain them for Rent, or Services Arreare.

If your Treſpaſs be, for taking avvay of Goods or Chattels, out of your ground or houſe (albeit money) and ſuch things are commonly taken out of your houſe they are to be named particularly, and their value, if money in a Bag, the particular Sum.

In caſe a man take away a VVard, an Action lyes wherein you muſt ſhew how the plaintiff came to have right

Right to the Wardwhich the Defendavt detaineth, as if it be Knights ſervice by his Fathers holding of ſuch a Mannor of the Plaintiffs, the Lands he dyed ſeized of *&c.* Shew the manner of the Tenure, and that the Childs Father dyed in the Homage of the Lord, whereby the Right of the Childes Marriage belongeth unto him: You muſt likewiſe know the time and place of taking him away, the Age of the Ward, together with the Damage the Plaintiffe ſuſtained.

If by ſocage Tenure the Lands holden, then the next of kindred (to whom the Lands cannot diſcend) hath the like Action for his Ward, wherein he muſt ſhew what he dyed of in Socage-Tenure, and of whoſe Mannour it was holden, together with the time the Plaintiffe was ſeized of him, and the time, manner, and place of his taking away.

In an Action of Treſpaſſe for ſpoyling or turning your Water-courſe, you firſt ſhew how he held the Water-courſe, from, where, aud whither the Water-courſe came, and that it had uſed ſo to come time out of minde; then what benefit it did the Plaintiffe, as in making his Grounds fertil aud for watering his Cattel; then how the Defendant did ſtop that Courſe and with what, and the time by reaſon whereof the Plaintiffe hath loſt the benefit of it for ſuch a time; or if the Ground be overflowed by the like courſe, then ſhew how the Defendant, having ſuch a Water-courſe or Mills, lying neer the Plaintiffs Ground, did open his Floud-gate and ſtopped the Water-courſe, and cauſed it to overflow the banks and drown the Lands

In Actions of account, take theſe enſuing.

IF an Action be brought for Arrerages of accounr, as where divers Reckonings are between two Perſons,

ſons, and they account together, and upon that account the one is found indebted to the other; then know the time when the parties accounts were, and before whom, if they had any Auditors, and what the ſum was, he was to account for, and the time when it was appointed to be paid by the Auditors.

If you charge any as Receiver for monys delivered name the time when, and the place where, and the perſon that delivered it, and the Sum that was delivered; if he received it for the Rent of any thing, it is beſt to name the thing for what it was.

If you charge him as a Bayliffe of Lands and Goods, ſhew from what time he hath been ſo of the things under his charge, and of all things he received, and how long ſince he was Bailiffe.

If you charge him as Bailiffe for any thing he hath ſold for you, recite the thing to be accounted for.

Detinue.

IF you would bring an Action of Detinue for any thing that you have brought cannot have, ſhew the time when you bought it, and what you paid, and the time for the delivery of it.

If you have delivered any thing to any man, and cannot have it again, you may have the like Action, knowing the value of the thing delivered, and to what uſe you did deliver it, and what time was appointed for the redelivery of it, in caſe it be for writings, either upon the delivery, or that it came to the Defendants hands by chance, know the Date and the effect of the Writing, the time when the Plaintiffe was poſſeſſed of it, and the time when the Defendant had it.

In Actions of the Case take these ensuing.

FIrst for Trover, which is for the recovery of goods that come to any mans hands by chance or not in a warrantable way, know the nature of the goods, the value of them, the time and place when and where the Plaintiff was possessed of them, and how they came to the Defendants hands.

In an Action of the Case for words, if the Plaintiff have borne any Office of credit, it would do well to recite it in the Declaration, and know the time and place of speaking the words, either to the Plaintiff, or of the Plaintiff, together with what other Circumstances may make to aggravate the words spoken by the Defendant.

In an action of the Case, where felony is laid to ones charg, and the Party carried before a Justice of *peace*, and so bound over to the Assizes; be sure in this case to take notice of the time when, and the place where he laid the Felony to him, and for what, and the Constables name that detained him, and the Justices name before whom hee was brought, and the bayling or committing of him till the Assizes, the day of the Assizes held, and before whom the Copy of his Indictement, and his Acquittall thereupon.

Upon an Escape upon a meane Processe.

IF the Bailiff have Arrested the Party you are to sue upon mean Process, and either for favour or Bribes, release him afterwards, so that you lose thereby the benefit of your Arrest. For Instructions.

First

First know what cauſe your Client had againſt the perſon ſo Arreſted, and for how much money, and then ſet forth that for the recovery thereof, he took out ſuch a VVrit, returnable ſuch a time, directed to ſuch a Sherif whereupon a VVarrant was made & delivered to the Bailiff, by vertue whereof he Arreſted the Party and ſuch a day releaſed him.

VVhen you buy any thing upon VVarranty, whether it be living Cattell, or any Chattels or goods that are warranted to be ſound, uſefull, and good, or that ſhould contain ſuch a number, either of loads, Pounds, weight or meaſure, and it holdeth not out ſo, an Action lyes, in which caſe you muſt take notice of the quantity and quality of the thing, when ſold, and for how much, the time and place, and that the Defendant did warrant it to be good, *&c.*

An Action likewiſe lyes againſt a Farrier, who for a ſum of money undertakes a cure, and wholly neglects it, or uſes contrary or poyſonous Medicines, whereby your Horſe dieth or is worſted

And likewiſe againſt a Smith that pricks your Horſe in ſhooing of him, whereby he becomes lame and unuſefull, and you loſe the benefit of his Service.

And where a Taylor taketh a quantity of Cloath or Stuff to make a Suite, and cutteth it ſo ſcanty as that it will not be for the Parties uſe.

And likewiſe for many other frauds and deceits, both in Shop-keepers, Artificers & men almoſt of all Myſteries and profeſſions.

Having thus given ſome briefe directions what to take by way of Inſtruction and Information for the Attorney, in behalfe of his Client, in order to drawing a Declaration, I ſhall now proceed to the ſaid declaration, Iſſue, & Judgment, after appearance made by Superſedeas

ſedeas to the Exigent, *or upon any other appearance upon Arreſt had by vertue of mean Proceſs.*

THe Defendant appearing by putting in ſpeciall Bail to the Action, or otherwiſe upon the *Capias*, *Alias*, or *Plures* in the Philizers Office, where the ſame was ſued forth, or by *Superſedeas* to the *Exigent*, brought and allowed with the Sheriffe, you muſt informe your ſelfe what Attorney doth appear for the Defendant; that done, you muſt declare either upon Bond, Bill, Indenture, Treſpaſſe, or otherwiſe, as your Caſe requires, alwayes obſerving this rule, that there be no difference between the Additions in the Writs or Summes therein contained, and your Declarations, for they muſt litterally agree, the one being a Warrant for the other; for if there be variance, and the Defendant take notice of it, he may plead that variance in abatement to the Writ.

And for the drawing of thoſe Declarations, it requires the skill, ſtudie, and experience of an able Clark of the *Prothonotaries* Office, and ſome helps there have been formerly by Books of *Entries*, which being at an Extraordinary rate, have not been ſo much in uſe amongſt Attornies, but there is now a Book extant of ſelect *Preſidents* in *Engliſh*, for almoſt all Declarations, out of the Works of the learned *Prothonotary* Mr. *Brownlow*, and is of ſmall price, ſold by Mr. *Twyford* in *Vine-Court* Middle Temple, to which I referre you.

Having your Declaration drawn, you muſt enter it upon ſome roll of the Court, in one or other of the *Prothonotaries* Office, either by your ſelfe or ſome Clark of the Office, who muſt ſee it put in the Docquet of that Office, and thereto put the number Roll, and ſo enter it in your owne Docquet book, and keep your number-roll, that ſo you may have recourſe to

the

the Roll afterwards to enter up your Continuances, if the Cauſe continue above one Term before Judgment or tryall had.

By the courſe of the Court the Defendants are to anſwer the ſame Term they appear, if the Writs be returnable at the beginning of the Term, eſpecially in Iſſuable Termes, which are *Trinity* and *Hillary*; but in other Termes if the action be not laid in *London*, the Defendants have for the moſt part imparlance, or time to plead till the next Term.

And here take notice there be two kinds of imparlance, the one Generall, the other Speciall; after a generall imparlance had, the Defendant cannot plead in abatement to the Writ, Excommunication, or the like, nor any Priviledge out of another Court as a priviledged man.

But after a ſpeciall imparlance many pleas may be pleaded, which after the generall imparlance cannot be allowed: If a ſpeciall imparlance be prayed, you muſt take for the Entry thereof of the Defendants Attorney the ſumme of 2 *s.*

If the Attorney for the Defendant upon receiving a Declaration do not crave that the condition of the Bond may be entred with the imparlance; and do not pay for the ſame, then he is debarred from pleading Conditions performed at any time after, without moving the Court, and paying 5 *s.* to the Iudges Box.

Rules to anſwer muſt be entred in ſome of the Remembrances in one of the *Prothonotaries* Office, which is done briefly thus.

Hereford

Hereford. ff. *An Imparlance between A. B. plaintiffe, and L. D. lately of S. in the County af H. Yeoman, otherwiſe called A. B. of L. in the County of H. Yeoman, Defendant, of a plea af debt.*

WHich being thus vvritten, you put either in the Margent, or over head your rule, vvhich is, unleſſe the Defendant plead (vvithin ſome few dayes) let Judgement be Entred.

And theſe are entred either by the Secondary of the Office, where the Plaintifs Attorney enters his Cauſes on the Bill of pleas; or as before I have ſaid, by the Attorney or Clark for him, upon the common remembrance, for which there is 4 *d.* & upon the Expiration of the ſame rule, no Plea being brought in, you muſt ſigne Judgment with the *Prothonotarie* for want of anſwer.

If the Attorney for the Plaintiff doe not declare againſt the Defend. upon his appearance within reaſonable time in the Term after the appearance made, then the Attorney for the Defendant may alſo enter a rule in the Bill of pleas againſt the Plantiff, to declare; and thereupon cauſe a *Non proſecutus* to be entred, which muſt be ſigned with the *Prothonotary*, and Coſt given for the unjuſt vexation; for vvhich Coſts he ſhall have Execution againſt the Plaintiff. But if the Plaintif ſue as Executor, or Adminiſtrator, he ſhal pay no coſts upon any Non-ſuit.

The imparlance is a time of leave, or licence given from one Terme to the Terme ſucceeding, by the Plaintiff to the Defendant, either to plead to his action brought, or to let it paſſe by default; and to that purpoſe the next Term after the imparlance had as aforſaid, the Attorney for the Plaintiff may call to the Attorney of the Defendant, to anſwer to the Declaration

Declaration, and if he do not plead in due time, give him rule to anſwer, which done and the Rule expired he may enter Judgmnt as before is declared, either by *Nihil dicit*, for the Debt and coſts, as is fit and very uſual in caſes before expreſſed, if Debt.

Where the Defendant pleads general Iſſues or pleas as is moſt uſuall, and now directed to be done by a Statute lately made, whereby the ſpeciall matter if any be, may be given in Evidence, as in an Action of Debt, that he owes nothing by the Country, *&c.* Or to Debt upon Bond, or Bill penall, that he did ſeal and deliver through threats, *&c.* Or by reaſon of hard Impriſonment, or that it is not his Deed, or that he hath performed conditions, or the like; or in action of the caſe, the general iſſue not guilty for words, if upon promiſe, that he did not aſſume, *&c.* And for not guilty likewiſe in action of Treſpaſs or Battery. In theſe or the like caſes of common Pleas or Iſſues there is no more requiſite, but that the Attorney for the Defendant, do put his hand to the Plaintifs Attorneys *Docquet* Book, and that done, the plaintiffs Attorney doth draw up the Plea, & make a copie of the Iſſue, & there delivereth it to the Defendants Attorney, who muſt receive it, and pay for entring ſuch his plea, and for the Book, and then uſually they give warning of a tryall, unleſſe they forbeare tryall the next Aſſizes.

But if the Defendant plead ſpecially (which will not be ſo uſuall as formerly) he is to bring it to the plaintiffs Attorney under a Serjeants hand, and if the Plaintiff reply ſpecially either by traverſe or otherwiſe, the Replication is alſo to be under a Serjeants hand, and he is to give it to the Defendants Attorney.

So if the Defendant demurre to a Declaration, it is alſo to be brought under a Serjeants hand.

It's moſt generall, that the Jury ariſe out of that County and Town or Pariſh where the action is laid for tryall, unleſſe it be removed by pleading, as where an action is brought upon a Bond or Bill, and the action laid in *Herefordſhire*, and the Defendant pleads conditions performed, for the mony paid at *Stow in Glouceſterſhire*, according to the condition, here the *Venire* ſhall not ariſe in *Hereford*, but in *Stow* in the county of *Glouceſter*, and thither ſhall the record be carried to be tried.

If an action upon the Statute of *Hue and Cry* be brought againſt a hundred for a robbery done within the Hundred, the *Venire* ſhall not ariſe in that Hundred; where the fact was done (for then they would be Judges in their owne cauſe, which is againſt common reaſon) but the *Venire* ſhall ariſe in the Hundred, next adjoyning, and to this purpoſe, the *Venire* muſt be awarded ſpecially, which is worthy obſervation.

After the Iſſue joyned and entred, there may be ſeverall cauſes of challenge, as where the Defendant is of kindred to the Sheriffe, either by bloud or marriage, the Plaintiffe may pray the *Venire facias* directed to the Coroners, and if the Defendant agree thereto, it ſhall be accordingly. This muſt be ſpecially awarded upon the Iſſue roll and in the awarding of it, it muſt be ſet down and derived how the Sheriff is of kindred, and then is the *Venire facias* directed to the Coroners, and this is called a challenge to the array.

You cannot make a challenge to the Jury, til after they are called, and before they are ſworne, for afterwards it comes too late.

If your tryall be by *Niſi prius* at the Aſſizes in the Country, and your Jury appeare not full upon the pannell, the Plaintiffs Attorney may crave a *Decem tales*

tales de circumſtantibus, ten of the ſtanders by to fill up the Jury, or a leſſe number, according as is requiſite, which *Tales* muſt be mentioned upon return of the *Poſtea*, and the judgement thereupon on the iſſue Roll.

And upon the Plaintiffs default, after the firſt Term the Defendants Attorney may bring the cauſe to tryall, by *Venire Facias*, by Proviſo.

If at the triall of any *Niſi prius*, the witneſſes of the Plaintiff or Defendant will not voluntarily appear, without being ſerved with the proceſſe, to teſtifie the truth of their knoledge, in the matter or cauſe in queſtion, then you may have a *Subpœna ad teſtificand.* for the ſaid witneſſes out of the *Prothonotaries* Office, and therewith ſerve them, and compell them to appear, the Fee whereof is, 2 s. 7 d.

When you proceed unto your tryall, you muſt, having entred as before your Declaration with the Iſſue joyned in the *Prothonotaries* Office, you muſt make out a *Venire Facias* upon your Iſſue, and get it ſigned with the *Prothonotary*, and having ſealed it, you muſt get it returned by the Sheriffe of the County or City where you lay your Action, and upon returne thereof, you muſt alſo ſue forth a *Habeas Corpora*, which is made by a particular Officer of the Court, called the Clark of the Juries, and deliver the ſame to the Sheiffe in due time, that ſo he may warne the Jury, and get the ſame returned before the Aſſizes.

Note that if a cauſe be brought to tryall, and a *Habeas Corpora Juratorum* be delivered to the Sheriffe who ſummons the Jury, and if you for reaſons beſt known unto your ſelfe, defer the tryall untill ſome longer time, and afterwards you think fit to bring it againe to tryall, you need not be at charge of a ſecond *Venire Facias*, but may take a copy from the *Cuſtos brevium* of your firſt Writ, if you keep it not in your

your hands, paying him for it 8 *d.* and for the search of it 5 *d.*

Upon which Copie or old Writ, the Clark of the Juries will make you an *Alias habeas corpora*, or *Plures*, paying for it in Debt or Treſpaſs, 10 *d.*

And in other Actions, 1 *s.* 6 *d.*

And for the continuance of it every Terme, 4 *d.*

Then you muſt in ſuing forth your *Niſi prius*, ingroſſe your Record in parchment, *Verbatim*, according to the Copie of the iſſue made up, and the entry of it upon the Roll, in the Prothonotaries office, and then examine the ſame with the Prothonotary, if it be upon an iſſue joyned the ſame Term, whoſe hand muſt be to it, and then carry the ſame to the Clark of the Treaſury for the time being, giving him ſuch fees for ſigning and making up the Record, as are hereafter ſpecified.

But if the iſſue where entred of a former Term, then muſt you deliver the paper book of the iſſue to the Clark of the Treaſury, who will examine the ſame by the roll, and make up the record thereupon; which done, and the ſame ſigned by him or his Deputy you muſt ſeal the ſame with the Lord chiefe Juſtice of the Court, for the time being, who hath a ſeal for that purpoſe, and then deliver the Record ſo ſealed, together with the *Habeas Corpus Jur.* returned by the Sheriff to the Clark of the Aſſize for the ſame County where the matter is to be tryed.

The generall fees in an action of Debt, Treſpaſſe, *&c.* follow, as to making up the Record.

	s.	*d.*
For the *Venire facias*,	2	7 *d.*
For the return thereof,	2	4 *d.*
For the *Poſt diem* thereof,		4 *d.*
For the *Habeas corpora Juratorsand Expedition.*	2	
For ſummoning the Jury,	12	

If in *London*, or a Corporation, but 4 s. 4 d.
For signing the Record with the Clark of the Treasury, if the same exceed not 3 sheets 2 s.
For every sheet exceeding 4 d.
For Examining the *Jurators*. 4 d.
For writing the Record, for every sheet 4 d.
For examining the same by the *Prothonotary* 1 s.
For the Seal 2 s. 2 d.

Having thus procured your Record of *Nisi prius*, you are to carry it at the time of the Assize and deliver it in to the Clark of the Assize and there pay the Iudges fee, having retained your councell, and your Witnesses being in readinesse for the tryall of the Truth of your Cause, accordiug to the Issue.

The Fees you are to pay at the Assizes are as follow,

	s.	d.
For the Iudges Fee in putting in the Record of *Nisi prius*	11 s.	8 d.
To each counselour you retaine at the least	10 s.	
For reading the Record	10 s.	
For the Marshalls Fees	2 s.	
For the Iury, eight pence a piece	8 s.	
To the Bailiff that keeps the Iury	2 s.	
For the Crier	1 s.	
For the Oath of euery Witnesse	4 d.	
For a *Non-suit*		
For a *Tales de circumstantibus*		
For a privy verdict		
For a Warrant of atterney if the Attorney be absent	4 s.	

The fees doe somewhat differ, by custome in seuerall Connties But if the triall bee had before the Lord chief Iustice of the common Bench in *London*,

those are common fees to bee added unto the former.

For the Green-cloth	1 s. 6 d.
To the Bar-Keeper and Hall-keeper	2 s.
To the Judges Groome or Foot-cloth man	1
To procure the Record to be read	
For Lights, if the case be tryed by candle light	

The Assizes ended, your tryall being had, and Verdict, passed for your Client at the next Term following, you are to cal for the return of the *Postea* from the Clark of the Assize, and thereupon bring the same to the Prothonotaries Office to get costs assessed, for which end (if your charges have been extraordinary) you must bring a Bill of disbursments under your hand, otherwise not, and thereupon cause Judgment to be entred: For the Entry whereof, the generall Fees are as follow.

For the return of the *Postea*.	2
For signing the Costs.	1
For entring the Judgment if the Jury did full appeare.	2 s. 4
If there were a *Tales*, then more.	2
For the Copy of the Judgment.	1 s. 4

Having thus far proceeded, you may now procure Processe and Writs of Execution, by *Capias ad Satisfaciendum*, *Fieri facias*, *Elegit*, or otherwise, according to your desire, and as the nature of your Action brought doth allow or require; wherein,

Note that the *Capias ad Satisfaciend.* is the taking of the Bodie only of the partie in Execution, till he satisfie for the Debt and Damages, The *Fieri facias* against the Goods onely, and the *Elegit* against the Moietie or any one half of his Lands and Tenements

nd all his Goods, and Chattels (his Oxen and Plow-Cattel only excepted) to have and to hold the Goods as his own Goods, and the ſaid Moietie of the Lands untill his Debt and coſts ſhall bee fully ſatisfied nd paid. But note this, that after an *Elegit* executed nd filed you can never have any other Execution, it eing your own Election.

Note alſo, that if you firſt ſue forth a Writ of *Fieri Facias* againſt the Goods of the Defendant, and by ertue thereof levy part of the Debt and not the whole hen you may have afterwards a *Capias ad Satisfaciend.* againſt his Body, or an *Elegit* for the reſt, but if ou firſt Impriſon his body by vertue of a *Capias ad atisfaciend.* then you cannot have a *Fieri Facias* a-ainſt the Goods, or an *Elegit*: if you have ſeverall dgments againſt ſeverall men for one and the ſame Debt, they being jointly and ſeverally bound for the me; you may have two or theer ſeverall Executions gainſt them all, untill the Debt and Coſts be ſatisfied y one of them, but cannot have the whole of every them; and if the Defendant be in another County, not to be found in the ſame County where the Acti-n was laid, then you muſt ſue forth a *Capias ad Satisfaciend.* into the ſame Countie where the Action was id, and get the Sheriff to return upon it (that he is ot to be found) and then ſue forth a *Teſtatum* into e County where he is to be found: And thoſe Exe-tions made immediately after Verdicts &c. Judg-ents had upon them are made by the Clark of the dgments in the reſpective Prothonotaries Office, o keep the Judgment papers where they are tran, ibed.

We have now ſhewed you the courſe how to pro-ed to tryall, after Outlawry reverſed or an ap-rance, in caſe the Defendant plead an iſſuable Plea indeed upon any other appearance made upon

mean Proceſſe: Onely take notice of this, that if the Plaintifs Action be juſt, and right, and for good Debts or juſt cauſes of Action; the Attorney for the Defendant ſhall doe well to counſell his Client to yeeld to Judgment, either by way of not being informed, Confeſſion, or otherwiſe, ſo that he procure ſtay of Execution againſt his Client for ſuch time as ſhall be agreed on by both Attorneys which muſt be carefully looked unto by the Attorney of the Defendant in time, before the rule be on and they take Judgment by default: And this he ſhall do by putting his hand to the Plaintifs Attorneys Docquet Book, in this manner.

I am not informed ſo that Execution be ſtaid till the Morrow after the holy *Trinity.*

Hereford, ff. Bridges for *Lacie.* *Dowdeſwell*
Dowdeſwell for *Hunt. Rot.*

After which you draw up the Judgment ſhort in paper and carry it to the *Prothonotary*, who is to tax Coſts and for that you pay him 3 *s.* 4 *d.* if in debt upon one ſingle Contract, and then you are to take it out (the Plaintifs name, and the Defendants and the Attorney for the Plaintif, in the judgment Book) after which you enter it upon ſome Roll of the Court in the *Prothonotaries* Office, and keep the number Roll by you to your Docquet Book, that ſo upon al occaſious you may have ready recourſe to it; and the Plaintifs Attorney muſt be carefull of keeping together the Copies of all his judgments, that ſo when he hath occaſion to renew them by *Scire facias*, he need not bee driven to take ont new Copies, which are chargeable out of the Treaſury.

And note, that in caſe the judgment have continued above a year and a day, and no Execution taken out, he muſt be put to renew it by *Scire facias*

ſo muſt he likewiſe doe, in caſe the Plaintiff or Defendant die.

And in caſe of any Iudgment had in Debt againſt an Executor or Adminiſtrator, you can have but a *Fieri facias* of the goods of the party deceaſed, in the hands of the Executor or Adminiſtrator, but if the Sheriff return upon your *Scire facias* a *devaſtavit*, then ſhal you have a *Fieri facias* of the proper Goods of the Executor, or adminiſtrator; and if the Sheriff return that he hath no goods, you ſhall have a *Capias* againſt his Body and after an Exigent, and ſo to the Outlawry after Iudgment, if you pleaſe, in caſe you find him not eaſily to be Arreſted.

The courſe whereof is thus:

FIrſt then he muſt have a *Capias ad ſatisfaciendum* to be made for the Debt and Coſts, if it be in debt or after a judgment had for Treſpaſſe for the Damages and Coſts, as in the Judgment with which muſt bee made into the ſame County where the Action was laid and get the ſame returned by the Sheriff, with (*That he is not found, &c.*) Then he muſt cary the ſame to the *Exigentor* of the ſame Countie, who will make an Exigent thereupon which muſt be delivered unto the Under-ſherif to bee executed and returned accordingly, as other *Exigents*.

NOte that in this Caſe there ſhal ned no Declaration at allagainſt the Defendant, to give him notice thereof.

The *Exigent* being returned, you may ſue forth the Proceſſe of Outlawrie from the Clark of the Outlawries, either generall or ſpeciall, as in other Actions afore ſpecified; wherupon the Defendant, if he

be arrested, cannot be discharged without satisfactio to the Plaintiff, and reversing, or pardon of the Outlawry; this is the utmost and last proceeding the Common Law doth or can afford in any Case whatsoever.

The Fees to the Outlawry after Judgment are as follow.

	s.	*d.*
FOR the *Capias ad satisfaciendum*	1	-
For the return thereof	0	-
For the *Post diem*	0	-
For the *Exigent*	1	-
For the returne thereof	0	-
For the generall *Capias ut lagatum*	0	-
For the speciall *Capias ut lagatum*	2	-

Note that in this Case you may have either general or special *Capias utlagat.* into as many severall Counties as you will, either in *England* or *Wales*; but observe further, that no processe whatsoever issuing or to be made in or out of the Common-pleas, can be directed or executed to or by any Under-sheriff in *Wales*, but onely *Elegits*, *Extents*, Proclamations upon the meane Processe as before: *Capias utlagatum*, generall or special, or upon Outlawries after Judgment. If the Defendant be Outlawed after Judgment, if he cannot be arrested within a year and day, yet the Plaintiff shall not need to renue judgment by way of *Scire facias*, but otherwise in case he be not Outlawed, he must, as I before recited.

The

The manner of renewing the Judgement by Scire Facias.

FIRST, The plaintif muſt ſue forth a *Scire facias* againſt the Defendant in the County where the Action was laid, directed to the Sherif to give notice, to the Defendant to appeare and ſhew cauſe why the plaintif ſhould not have Execution againſt him, for the Debt & coſts formerly recovered: To which Writ if the Defendant can ſhew any good cauſe as a Releaſe, ſatisfaction, or any other juſt cauſe or ſufficient diſcharge, then he may appeare and plead in Bar his diſcharge.

If the Defendant upon return of the ſame *Scire facias*, do not forthwith appeare and plead, the Plaintif ſhall have preſent Execution againſt him.

But if the Defendant, after the ſaid Judgment obtained, and before ſatisfaction of the ſaid Debt had, unleſſe the plaintif procure a *Scire facias, &c.* to bee returned upon the firſt *Scire facias* againſt the Executor or Adminiſtrator, then the plaintif muſt ſue forth a ſecond *Scire facias* againſt the Executor or Adminiſtrator of the Defendant, and upon their ſecond default, the plaintif ſhall have preſent Execution againſt them, having after the return of the ſaid *Scire facias*, taken it out, and given a Rule in the Remembrance in the *Prothonotaries* Office to this purpoſe, that unleſſe the Defendant plead ſomething to his Writ (by ſuch a day) Execution is to be made by default.

NOte that theſe ſeverall Writs are to be made and ſued forth together with the Execution, in and out of the ſame *Prothonotaries* Office, and where

the first Iudgment was entred: And the said Writs of *Scire facias*, together with the new Iudgment had thereupon, to be entred upon Record, in the same Office, and the Writs carefully filed with the *Custos brevium*.

The severall Fees are these.

For search in the Docquet for the Number Roll,	4 d.
For searching in the Treasury	4 d.
For the Copy of the Iudgment usually	2 s.
For the Clark for making the Writ	8 d.
To the *Prothonotary* for signing of it	1 s. 4 d.
For the seale of it,	4 d.
For the Return with a *Nichil*	1 s.
For the Return with a *Scire feci*	2 s.
For entring the Iudgment upon default, upon one *Scire facias*.	2 s.
If upon two *Scire facias*	4 s.
For the Copy	2 s.
For taking the Writs into a Remembrance	1 s.
For the Rule	4 d.
For a Warrant of Attorney.	8 d.

Upon these proceedings duly and truely performed, the plaintiff may have Execution against the Defendant, by *Capias ad satisfaciendum*, by *Elegit*, or otherwise at his pleasure (as is before told you in Writs of Execution:) And if the Defendant be dead, then there shall issue against the Executor, a *Scire facias de bonis testatoris*

Thus

THus far having proceeded in Debt againſt the Defendant himſelfe, his Executor, or adminiſtrator either by way of *Scire facias*, or otherwiſe, we now proceed to proſecution to Iudgment and Execution upon ſpeciall Baile; wherein obſerve theſe Rules following.

IF the Defendant be arreſted by meane Proceſſe, as *Capias*, *Alias*, or *Plures*, and the Plaintiff holdeth him not ſufficient to anſwer the debt or damages contained in the Writ, the ſame amounting to 20 *l.* or upwards: In this Caſe the Plaintiff upon the returne of the Writ, may crave ſpeciall Baile to be put into his Action, which the Defendant muſt put in before ſome Iudge of the Court where the Cauſe depends, who will accept of ſuch Baile as the validity or weight of the Cauſe doth require, or in his diſcretion ſhall bee thought fit.

If the appearance be upon arreſt, by the *Capias*, *Alias*, or *Plures*, then the Bail muſt be taken, and entred by the Philizer of the ſame County where the Action was laid, and who made the ſaid Proceſſe.

BUt if the Defendant be arreſted in the Mayor, Bailiffs, or Sherifs Court, of any City or Corporation, and the Defendant by any Writ of priviledge, or *Habeas Corpus*, doe remove the ſame out of the ſame Corporation to be tried at Common Law above.

Then the Baile being taken by any Iudge of the ſame Court, muſt be entred in the ſame *Prothonotaries* Office, where the ſaid Writ of priviledge or *Habeas corpus* iſſued and was ſued out.

THe Defendant being as a foreſaid bayled, the the Plaintif may proceed and declare againſt him

as

as the nature of his Cauſe or Action ſhall require, ob
ſerving the ſame form and manner in every reſpect o
point to procure Iudgment and Execution by way o
Nihil dicit, *non ſum informatus*, Confeſſion of the Acti
on tryall by *Niſi prius*, or otherwiſe, as is formerly ſe
down and expreſſed by *Superſedeas*.

And the Plaintiff having obtained judgment againſt
the Defendant, and perceiving that hee is not eaſily t
bee arreſted and taken in Execution, or not ſufficien
to ſatisfie the ſame, but knoweth the Bail to bee bette
able, then the Plaintiff, may at his choice leave th
Defendant, and proſecute the Baile in this manne
following.

FIrſt, the Iudgment being entred, he muſt ſue forth
an Execution by *Capias ad ſatisfaciendum* againſ
the Defendant, directed to the Sheriff of the ſam
Countie where the Action was firſt laid, and upo
the return thereof, get the ſame returned by *Non e
inventus*, that is, (he is not to bee found) then h
muſt procure a Writ of *Scire facias* againſt the Baile
to ſhew cauſe why the Plaintiff ſhould not have Exe
cution againſt them according to the Recovery o
Iudgment ſo had againſt the Defendant, upo
which Writ if the Sheriff doe returne a *Scire feci*
then there needs no ſecond Writ to be made; but if he
return a *Nihil* then there muſt be a ſecond Writ o
Scire facias, which being returned likewiſe with a *Nihi*
then the two Writs of *Scire facias* muſt be taken ou
upon remembrance in the *Prothonotaries* Office wit
the returnes of them, and Rules thereupon given
and filed accordingly with the *Cuſtos Brevium*, an
thereupon if the Baile ſhew not cauſe to the contrary
Iudgment by default ſhall bee entred againſt them i
the ſaid *Prothonotaries* Office for the ſum in whic
they became Bail as aforſaid, whereupon the Plain
ti

tiff may take Execution out against them, either by *Fieri facias*, or *Elegit* but not by *Capias ad satisfaciendum*.

AND in this case observe, that the plaintiff may likwise sue and arrest the Baile going by way of Originall at the common Law, for the sum for which they became bail, and arrest there Bodies, either upon the *Capias alias*, or *Plures*, or sue them to the Exigent thereupon, and declare upon the said Recognizance, using all proceedings therein as in an Action of Debt, but in this the Action must bee laid in the Countie of *Middlesex* onely, where the Records do lie, and whence the *Venue* out of that respect must ise.

And if the bail cannot be arrested in the County of *Middlesex* upon a *Capias*, &c. you may return (he can not be found, &c.) and sue forth thereupon a Writ of *Testatum*, and by that means arrest them in any other Countie where they may be found, observing all the proceedings, as in an Action of Debt.

WEe have now shewed you how to proceed against the Bail, as well as against the Defendant himself, we com next to shew you how to prosecute Writ of Errour and reverse Judgment thereupon which is not so absolutely taken away as most men conceive by the late statute) but that still if there bee substantiall matter of Error to be allowed of the Court holds good after verdict, and is not at all taken away in Judgment upon *Nihil dicit*, &c.

And there are various causes of reversing an Outwry. as wee formerly shewed, so some of them may erve to reverse a Iudgment, which I shall here particularly relate.

After

After a Judgment had and recovered by (*Non sum informatus*,) Confeſſion or otherwiſe (if it be not by triall of *Niſi prius*) theſe cauſes of Errour or any of them being duely found, may ſerve to reverſe and make void the ſame.

Firſt if there be any materiall difference or variance between the additions in the Originall, or the proceſſe of *Capias Alias, plures*, and Exigent, and the Iudgment which is warranted by them; this is good cauſe of Errour.

Secondly, If the Debt demanded in the proceſſe or either of them, and the Debt in the judgment recovered do not agree, but are different, this is good cauſe of Errour.

Thirdly, if the Writ be not ordinarily and duely returned and filed with the *Cuſtos brevium*, there is juſt cauſe of Errour.

Fourthly, if there be not warrants of Attorney duly filed, and put in the Office accordingly, as the cauſe requireth, as one for the Plaintiff upon ſuing forth of the Exigent, or upon the entry of the Iudgment, there is good cauſe of Errour, for which you are to make ſearch with the Clark of the Warrants for the time being.

And for theſe and al other Errours, you are to ſearch and get copies of the Writs from the *Cuſtos brevium* and obſerve diligently both them and their returne and confer them with the Iudgment as it is entred upon Record in the *Prothonotaries* Office, where you are to take your number Roll out of the *Docquets* for that purpoſe, that ſo you may goe readily to it in the Treasury.

Fiftly, if the Defendant be arreſted by a Writ of *Teſtatum* in a forraine Countie, and no Writ of *Capias ad ſatisfaciendum* returned againſt the Defendant with a *Non eſt inventus*, in the ſame Countie, where

he Action was laid and filed with the *Coſtos brevium*, hat is good cauſe of errour in the Execution, but not n the iudgment.

NOw being informed of the cauſes of Errour, and that the Defendant bee not arreſted and taken n Execution, but would avoid the ſame, then muſt he proceed as follows.

IN the firſt place, haveing the number Roll, he ſhall do well to get a copie of the judgment, with the Additions of the party Defendant, and of the Debt nd Coſts of Suit literally as it is entred upon the Record.

The *Prothonotaries* Office as I formerly told you, s the place where you are firſt to reſort, and there to he Docquet houſe to find out your number Roll in he Docquets of that Terme, when the judgment was entred; and having found the Cauſe, take the number Roll, and then repair to the Records in the Treaſury t *weſtminſter*, and ſo the Roll, & take a true Copie of he Iudgment in all things, as above.

Then carry the ſame or a Copie of the Præcipe, Debt nd Coſts, to the Curſitor of the ſame Countie where the Action is laid, who thereupon will make you Writ of Errrour.

THen you muſt goe with the Writ of Errour to the Clark of the Errours, for the time being, who will ake out the Iudgment with the Debt and Coſts of Suit, in his Book of Remembrance for Bail, & be ſure you carry with you good Sureties, ſuch as the Validity of the canſe doth require.

Thereupon your Sureties, together with the Writ, muſt bee brought to the Lord chiefe Iuſtice of the common

common Bench for the time being, and there ente Bail in a Recognizance, together with the Defend in double of the Debt, that the Defendant hath goo cauſe of Error, and ſhall follow the ſame Writ wit effect: And if the Defendant ſhall happen to be con demned therein, and not able to prove ſufficient Erro therein, then that the Defendant ſhall pay the Con demnation therein, with further coſts of Suit, ſuch a ſhall be allowed, or they the Sureties for to do th ſame; To this the Judge ſubſcribeth his hand an thereupon giveth warrant to the ſaid Clark of th Errors to make *Superſedeas*, 1, 2, or more as the Defen dant for his Indempnity, or ſafegard from Arreſt ſhal require which writ or writs the Defendant is to allow with the Sherif of the ſame Countie or Countie where he ſtandeth in danger or fear of Execution be fore he be Arreſted, or the ſaid Execution Executed either upon Body or goods, or elſe the ſaid *ſuperſedea* is of no force, nor can be allowed, whereof the Defen dant is to have ſpecial care, that he have it in an earl manner.

And this may be done as well in the Vacation, a in Term time, if the Defendant be not arreſted, o have his goods taken in Execution, by vertue of th ſaid Judgment.

But if the Defendant be taken in Execution before the *Superſedeas* bee procured, then the *Superſedea* comes too late, for the Defendant ſhall not thereupo be releaſed, but muſt continue in durance, untill ſuch time as the Judgement ſhall bee reverſed by the ſay Writ of Errour, in the Upper Bench.

FOR Reverſall whereof he muſt not onely ſu forth his Writ of Errour, as above, but alſo cauſ the whole Record of all the Proceedings, from th Originall aad the beginning of the ſame Cauſe(if Er

rou

our be not found in the entry of the Judgment it ſelf) o be certified by the ſaid Clark of the Errours, out f the Common pleas into the Upper Bench, & Aſſign auſe of Errour there.

The Record being thus certified, and Errour aſ- igned upon the return of the ſaid Writ of Error, he is o take Copies thereof, and thereupon ſue forth a Writ f *Scire facias* to the Plaintiff, in the Action to hear rrors.)

To this the Plainriff if he ſee cauſe may appear and lead, and the moſt uſual and common Plea there, is, hat the Record is in nothing Erroneous.

The Plaintif having ſo pleaded, & willing to have he ſaid Errour argued, and the Judgment confirmed s cauſe ſhall require.

The Defendant according to his Recognizance; uſt ſo follow the ſame with effect, or elſe hee will bee ondemned therein.

The Defendant is then to labour for a day, given or the arguing or the ſame Errour, if the Cauſe ſhall o require.

But if the Defendant doe delay the Plaintif, the Plaintiff is to ſue forth two *Scire facias* againſt the Defendant, to ſhew cauſe why he ſhold not have Execution: And if at return of the ſecond *Scire Facias*, Errors be not aſſigned, Judgment is confirmed for the Plaintiff.

NOte that in this caſe upon a Writ of Error brought upon a Judgment had in the Court of Common Bench, and returned into the Upper Bench the proceeding thereupon muſt be only in the Upper Bench, which Court aud no other it doth properly belong after it is thither returned.

But

But a Writ of Errour upon a Iudgmene had in the Upper Bench muſt bee returnable in the Exchequer Chamber; and the cauſe of Error is onely heard and determined before the Lord chiefe Iuſtice of the common Bench, the Lord chief Baron of the publique Exchequer, & the reſt of the Iudges and Barons, who are of the Coife of thoſe two Coutts, and not before the Iuſtices of the Court of Upper Bench, where the Cauſe formerly depended; and received its Iudgement.

If the Errour be found and allowed by them, to bee ſufficient and good, then the ſaid Iudgment is by their full conſent and judgmenr to bee reverſed and made void.

But take notice, that not withſtanding the reverſall thereof, it takes not away the Plaintiffes cauſe of Action, for the plaintiff may commence a new Action againſt the Defendant for the ſame Cauſe, if hee ſo think fit.

If the Errour be not found good and allowed, then is the former Iudgment aſhrmed, and futher Coſts for delay of Execution allowed to the Plaintiff, who may preſently ſue forth Execution out of the Court of Upper Bench, either againſt the Defendant or his Sureties as he thinks beſt, and proſecute againſt them either by ſcire facias, &c. as in the caſe of ſpeciall baile, as above, or by an action of debt: But if any writ of errour be ſued in any other action then an action of Debt, no Baile is required.

The Fees in this caſe are very uncertain, and cannot be expreſly ſet down, but the Heads of them, according to their proceeding, are as follow.

For ſearch of the Record to find the Errour.

For

For the Copies of the Record.
For the Writ of Errour.
For the Lord chiefe Justices Fee.
For puting in Baile.
For certifying the Record.
For assigning causes for Errour.
For an *Habeas Corpus.*
For the allowing.
For the return.
For the *Supersedas.*
For the Copy of the Writ of Errour.
For drawing *Diminution* if need require.
For the Copy thereof.
For entring the Errours and Plea.
For a *Certiorari* it need require.
For a Certificate from the *Custos Brevium.*
For entring the same, and *Diminution*
For the warrant of Attorney,
For the Copies of the Books for the Judges.
For Counsellours fees.
For affirming the Judgment.
For the Copy thereof
For the *Scire facias* and entring.
For filing and returning
For Attorneys fees.

Cum multis aliis quæ nunc, &c.

NOte that if upon any Judgment recovered and had against the Defendant, hee bee taken in Execution, or have his Goods taken, or his Land extended for the same, and upon full payment or satisfaction of the Debt and Costs, the Plaintiff either in person, or by his Attorney, doe acknowledge satisfaction upon Record, in the said Court wherein the Judgment was entred; and if the Defendant at no time, from thenceforth or after, made a Release of Errours

rours to the Plaintif, and that there be good cauſe of errour found in the ſaid judgment, the Defendant may bring a Writ of Errour upon the ſaid Judgment, and upon arguing thereof, (as before the Errours being allowed by the Judges, and the Judgment thereupon reverſed) the Defendant may ſue forth a Writ of Reſtitution againſt the Plaintife, and recover back again the full Debt and coſts of Suit ſpecified in the ſaid Judgment; but if he have made a releaſe, he is void of remedy.

And take notice further, that if there bee a Judgement had and recovered againſt the Defendant by way of *Niſi prius*, and verdict of twelve men, Then unleſſe he can find ſome cauſe in the Originall or the entring or giving of the ſaid Judgment after the Verdict ſo given and had, he cannot be admitted to ſue forth a Writ of Errour, for by many Statutes and particularly the Statute of *Jeofailes*, many great faults, miſpriſions, or cauſes of Errour had or committed in proſecution of the ſaid Cauſe before the ſaid Verdict, are taken away.

Obſerve further, that if the Defendant be outlawed after Judgement, and there be good cauſe of Errour to be found as well for or in the ſaid Judgement as Outlawry, the Defendant may bring a Writ of Errour, and be bayled for both, and have a *Superſedeas*, as well for the ſafeguard of his bodie as goods before they be arreſted or taken upon the ſame.

NOw becauſe wee have omitted to ſpeak of acknowledging of ſatisfaction where the debt is ſatisfied and Judgement had, whereby the Defendant in Caſe the ſatisfaction be not acknowledged may be in danger in paying twice, one and the ſame debt, therefore obſerve the enſuing rules.

VVhen you are to acknowledge ſatisfaction, be ſu

to have a sufficient warrant for it from your Client, and likewise let the Defendant seal a releasse of Errours for the reason before alledged.

If it be in Term time, get the Crier to bring the Roll into Court, and lay it before the Secondary, with the cause ready before him, and pray him to enter satisfaction, which the Secondary of that *Prothonotary* in whose Office the cause was entred, will do you, paying the Fees as follow.

To the Crier for bringing in the Roll	6 *d*
To the box if the debt be not above forty pound	6 *d*
If above forty pounds for every hundred pounds,	1 *s*
To the Prothonotary	2 *s*. 4 *d*
To the Secondary	4 *d*.
For the Attorneys fee	3 *s*. 4 *d*

HAving gone thus far in actions of Debt it rests now wee should speak something of a wager at Law, which is a plea usuall by the Defendant, where in action of Debt is brought against him, either for money lent, or upon a Book-deb, or upon detinue, or any other action of Debt which is not grounded upon specialty (unlesse it be where an account hath formerly been before Auditors) in all which cases the Defendant may wage his Law, and there are two wayes of waging Law.

The first is called *Lex justantur*, which is when your Client will presently upon pleading come into Court and swear that he oweth or detaineth nothing which case it behoves you to have your Client ready, at the time when you plead, to the next day, or second bring him into Court, and let him do his Law, in which case the Plaintiffe cannot become

non-ſuit; but upon a wager at Law at a day aſſigned he may be non-ſuited.

Note *Lex jnſtanter*, cannot be after a generall imparlance, nor doth an Eſſoyn lie in that caſe.

FOr the other kind of wager of Law, which is *Lex ad diem*, where a day is aſſigned, there is to be given fifteen dayes at the leaſt after the Law pleaded for doing thereof, that is, fifteen dayes after the comming in of your Imparlance, at which time, if your Client be not ready to do his Law, he may be Eſſoyned (that is to be excuſed for that time) and have a longer day to do it, which you muſt do upon the Eſſoyn day of that return, wherein your Law ſhould have been done in Court.

Note that the Plaintiffs Attorney muſt ever look on the days of Exceptions, in caſe there be no Eſſoyne caſt to enter a *Ne recipiatur*, but if there be an Eſſoyn caſt, then to adjourn it; and to look to the continuances, as this, and the nature of the actions, the Eſſoyns are caſt in, require.

Note further, that upon an Eſſoyn caſt, if it be not adjourned by the Plaintif, he may be non-ſuited, as is before ſhewed.

If an Eſſoyn be caſt where it will not properly lie you may have it diſſolved, which is called Quaſhing, which ſhall retnrn the Defendant or Tenant default.

NOte the Tenant or Defendant may (for the moſt part, be Eſſoyned upon every originall writ before apearance, with cauſe or without cauſe, whereby doth enſue great delay to the Plaintif, and ſometime the Defendant may be Eſſoyned after an Eſſoyn in Action reall (of which we ſhall hereafter treat more at large by it ſelfe.) The Tenant for life at the

return

return of the originall Writ may be Eſſoyned, and then the Defendant muſt adjourn the ſame, wherein muſt be given common dayes of return, and at the day given by the Eſſoyn, the Tenant may demand the view, wherein muſt be given other days of return and at the day of view, the Tenant may be Eſſoyned again, and then he may pray in aid of him in the Reverſion, and at the return of the ſummons *Ad Auxiliand.* he that is prayed in aid, may alſo be Eſſoyned for nine returnes, at which time the firſt Tenant may be Eſſoyned againe: And all theſe delayes the Tenant may inforce the Demandant to ſuffer.

Note that in all reall Actions upou the Summons, the Tenant may be adjourned by the demandant unto the ninth return following, Incluſive, but of this more in its proper place.

The Fees incident to the wager of Law and Eſſoyns, Exceptions and Adjournments follow in a Table amongſt other Fees.

NOte that many of theſe Actions of Debt are brought in inferiour Courts, as in the Sheriffs or Mayors Court in *London*, and in other Corporations, where they hold plea by their Charters for very great Sums, where the Defendant for delay or otherwiſe doth uſually bring a *Habeas Corpus* or VVrit of priviledge, which doth remove both the Body (if in priſon) togethet with the Cauſe.

This *Habeas Corpus* or VVrit of priviledge, muſt be made by one of the *Prothonataries* Clarks, and muſt be ſigned by one of the Judges of the court, and after by the *Prothonotary*, and after ſealed and carried under ſeale, and delivered to the Judge or Steward, or other Officer in chiefe, of ſuch inferiour Court where the Cauſe is depending, where upon allowance of it, they returne it, and certifie the cauſes,

which done, he that brings the *Habeas Corpus*, must put in baile above, before the Judge most usually that signes the Writ, such as the Judge shall approve of, when he sees what the causes are.

BUT if the party do not appear at the return of the said VVrit, and put in good baile, in some short time (for they cannot put in common bail, though the Action be never so small) you may have a *Procedend.* to carry back the Cause or Causes to the Court below, from whence they were removed, there to be proceeded into Judgment

The Fees of a *Habeas Corpus* are as follow.

	s.	*d.*
To the Clark for the VVrit	0-	8.
To the Prothonotarie for signing it	1-	4.
For the Seale	0-	7
To the Judge for his hand thereunto	4	0.
For the Attorneys Fee	3-	4
For allowing the VVrit	2-	8
For the return of the first Cause	2-	6
For every other Cause	1-	0
For a bill of *Multas causas* if in *London* for search		0-
To the Serjeant, if in *London*, for his Fee at least		10-
For putting in baile before the Judge for the first Cause	10-	8
For every other Cause	3	
To the Prothonotary for filing the baile for the first Cause	6-	
For every other cause	2-	
For the Attorneys Fee	3-	

Now

Now becauſe there are many miſcariages in theſe *Habeas corpus*. whereby the Writs themſelves become unuſefull, in being not allowed, all which proceeds moſt uſually from the miſtake of title of the corporation or court to which it is directed, I have thought fit to inſert the titles of the moſt corporations throughout *England*, as follows Alphabetically.

A.

St. *Albons*

TO the Major, principall Burgeſſes and Recorder of our Burrough of Saint *Albons* in the connty of *Hertff.* greeting.

Abenden.

To the Major and Bailifs of our Burrough of *Abenden* in the county of *Hertford*, greeting.

B.

Briſtoll.

TO the Major, Aldermen, and Sheriffs of the city or Town of *Briſtoll*, and to the Major and conſtables of the ſame city or Towne, and alſo to the Bailifs and commonalty of the ſame city or Town of *Briſtoll*, and to the Bailifs of the ſaid Major and commonalty of the ſame City or Town in Court, and to either of them, greeting: (Note this City hath divers Court within it, which cauſes the divers appellations.)

Burgavenie.

To the Steward and Bailifs of *L. Nevill*, Lord *Abergaveny* of his Town of *Burgaveny*, greeting:

Bridgewater.

To the Major and Bailifs of the Town of *Bridgewater*, greeting.

Bedford.

To the Maior and Bailiffs of the Town of *Bedford*, greeting

Bridgenorth.

To the Bayliffs & Burgeſſes of our Town of *Bridgenorth*, greeting

Boſton.

To the Maior & Burgeſſes of our Burrough of *Boſton* in the County of *Lincoln*, greeting.

Barnſtable.

To the Maior, Alder men, and Burgeſſes of our Burrough and town of *Barnſtable*, greeting.

Banbury.

To the Bailiff of our Court of *Banbury* greeting.

Barwicke.

To the Maior of the Town of *Barwicke* upon *Twede* greeting.

Battell.

To the Steward and Bailiffes of *A. Brown* Knight, Lord *Mountague*, of his Liberty of *Battel* in the County of *Suſſex*, greeting.

Bath.

To Maior, Recorder, Aldermen, and Juſtices of the City of *Bath*, greeting,

Boamyn.

To the Maior Common[a] lty, and Clarks of our Burrough of *Bodmyn* in the County of *Cornwall* greeting.

Buckingham.

To the Maior, Burgeſſes, and Steward of the Burrough and Pariſh of *Buckingham*, greeting.

St. Edmonds Bury.

To our head Bailiff of our Town of *Bury St. Edmonds* and

nd to our head Steward of our Liberty of the Burough of S. *Edmonds*, & to every one of them, greeting

Bewdley.

To the Bailiff, Recorder, and Burgeſſes of the Burough of *Bewdley*.

Bridewell.

To the Maior, Commonalty, and Citizens of the City of *London*, and to the Governours of the Hoſpitall of *Edward* the ſixth, late King of *England*, to wit, Chriſts *Bridwell*, St. *Thomas* the Apoſtle, greeting.

Beverley

To the Maior, and Governors of the Town of *Beverley*, greeting.

Biddiford.

To the Maior, Aldermen, head Burgeſſes, and to he Recorder, or his ſufficient Deputy of the Town of he Burrough of *Biddiford*, and to either of them, gree ing

Newcaſtle upon Tyne.

To the Maior, Aldermen, and Sheriff of the Town f *Newcaſtle upon Tyne*, greeting,

C

Cirenceſter.

TO the Maior, Aldermen, and Citizens of the City of *Ciceſter*, greeting

Colcheſter.

To the Bailiffs of the Town of *Colcheſter*, greeting.

Canterbury.

The Motaior and Bailiffs of the Town of *Canterbury*,

bury, and to either of them, greeting.

Coventry.

To the Major and Bailifs of the City of *Coventry*, greeting.

Chipping-Wiccomb.

To the Major, Steward and Bailiffs of the Burrough of *Chipping-wiccomb*, greeting.

Carliſle.

To the Major and Bailiffs of the City of *Carliſle*, greeting.

Cheſtenham.

To the head Steward, Bailif of the Mannor of the Burrough or Town of *Cheſtenham*, and to either of them greeting.

Chepſtow.

To the Steward and Bailifs of the Town of *Chepſtow* in the County of *Monmouth*, greeting.

Caſtle-riſing.

To the Major and Burgeſſes of the Town of *Caſtle-riſing*, greeting.

Chipping-Norton.

To the Bailifs of the Burrough of *Chipping-Norton* or otherwiſe, to the Common Clark, or Deputy there, greeting.

D.

Downehewot.

TO the Major, Aldermen, and Recorder of the Burrough of *Downehot*, otherwiſe called *Launceſton*, in the county of *Cornwall*, greeting.

Doncaſter.

To the Major and Recorder of the Town of *Doncaſter*

caſter, and to both of them greeting.'

Derby.

To the Major, Recorder, and Burgeſſes of the Town or Brrrough of *Derby*, or to either of them.

Downwick.

To the Bailiffs of the Burrough or Town of *Downwick* in the Connty of *Suffolk*, greeting.

Clifton, Dartmouth-hardneſs.

To the Major, Bailiffs, and Burgeſſes of the Burrough of *Cliſton, Dartmouth-hardneſe*, greeting.

Dover.

To our Conſtable of the Caſtle of *Dover*, and one of the Keepers of our five Ports, or to him that holds the place there.

E.

Ely.

TO the Juſtice of Pleas within our Iſle of *Ely*, held and aſſigned, greeting.

Exeter.

To the Major and Bailiffs of our City of *Exeter*, and to the Bailiff in Court of the ſaid City, and to either of them.

F.

Ferriet neere Shrewsbury.

TO the Steward and Bailiffs of the Liberty of *Ferriet* behind the Town of *Shrewsbury*, greeting.

Fleet.

To the Warden of the Priſon of the *Fleet*, or to him holding

holding the place, or to him holding the place there

G.

Gilford.

TO the Major of our Town of *Gilford*, greeting.

City of Glouceſter.

To the Major and Sheriffs of our City of *Glouceſter*, greeting.

Graveſend and Milton.

To the Major, Jurors, and Inhabitants of the town and Pariſh of *Graveſend* and *Milton* in the County of *Kent*, greeting.

H

City of Hereford.

TO the Major of our City of *Hereford*, greeting.

Hebſon.

To the Major and Burgeſſes of our Burrough of *Hebſon* in the County of *Cornwall*, greeting.

Haveringe.

To the Steward of our Mannor of *Haveringe Athowry*, greeting.

Higham-Ferries.

To the Major and Aldermen of our Town of *Higham-Ferries*, and to either of them, greeting.

Hertford.

To the Major and head Burgeſſes of our Burrough of *Hertford*, and alſo to the Steward in Court of Record there, greeting.

Huntingdon

Huntingdon.

To the Major and Bailifs of the Town of *Huntingdon.*

I.

Ipſwich.

TO the Bailife of our Town of *Ipſwich* in the County of *Suffolk* greeting.

Great Irnemouth.

To the Bailifs of the Town or Burrough, and Liberty of great *Irnemouth*, greeting.

K.

Kingſton upon Hull.

TO the Major and Sherif of our Town of *Kingſton upon Hull*, greeting.

Kingſton upon Thames.

To the Bailifs of our owne Town of *Kingſton upon Thames*, and Steward of the Town-Court there, and in the abſence of the ſaid Steward, to the Bailifs and Recorder of the ſaid Town, or to two of them, greeting.

St. *Katharines next the Tower.*

To the Steward of the Maſters, Brethren, and Siſters of St. *Katharines* behind our Tower of *London*, in Court there, greeting.

L.

Lincoln.

TO the Major and Sherifs of the City of *Lincoln*, and to either of them, greeting.

Ludlow.

To the Bailifs of the Town of *Ludlow*, greeting.

Lichfield

Litchfield.

To the Bailiffs, Burgeſſes, and Citizens of the C
ty of *Litchfield.*

Kings Lenne.

To the Major and Recorder of the Town or Bu
rough of *Kings Lenne* in the County of *Norfolk*, and
either of them.

Kings Lyn.

To the Major of our Town of *Kings Lyn*, in t
County of *Dorſet.*

Leiceſter.

To the Major, Bailiffs, and Burgeſſes of the Tow
of *Leiceſter*, greeting.

Lidford.

To the Major and Burgeſſes of the Burrough
Lidford.

M.

Maidſtone.

TO the Major of the Kings Towne and Pariſh
Maidſtone.

Monmouth.

To the Major and Bailiffs of the Town of *Mo*
mouth.

Kings Milcomb.

To the Major and Bailiffs of the Town or Bu
rough of *Kings Molcomb.*

Mincholts.

To the Burgeſſes of the Burrough of *Minchlots*, i
the County of *Somerſet*, greeting.

Marleborough.

To the Major and head Burgeſſes of the Bur
rough

ugh of *Marleborugh*, greeting

Middleton.

To the Steward of our court of *Middleton* behind *ttingborne*.

N.

Norwich.

TO the Major and Sherifs of the City of *Norwich*, and to either of them, greeting.

Newport.

To the Major, and Bailifs of the Burrough or own of *Newport*.

Northampton.

To the Major and Bailifs of the Town of *Northamp-*, greeting.

Nottingham.

To the Major and Sherifs of the Town of *Nottingm*, greeting.

Newark.

To the Major and Aldermen of the Town of *New-k* upon *Treat*, in the County of *Nottingham*.

O.

Oxford.

TO the Major and Bailifs of the city of *Oxford* greeting.

P.

Plymouth.

TO the Major of the Burrough of *Plymouth*, greeting.

Plympton

Plymton.

To the Maior, Bailiffs and Burgeſſes of the Bu rough of *Plymton*.

R

Reading.

TO the Maior and Burgeſſes of our Burrough of *Re ding*, greeting.

Rocheſter.

To the Maior, Aldermen, and Citizens of our Ci of *Roffen*, and to either of them, greeting.

S.

Sudbury.

TO the Maior, Aldermen, Burgeſſes, and Steward, our Town of *Sudbury* greeting.

Stafford.

To the Maior and Burgeſſes of our Town of *St ford*, greeting

Southhampton.

To the Maior and Bailiffs of our Town of *S thampton* in Court there, and alſo the Keeper of Gaole within the ſame Town, or to his Deputy, or either of them greeting.

Saltaſh.

To the Maior Aldermen; and Burgeſſes, of Burrough of *Saltaſh*, greeting.

Southwarke.

To the Steward in Court and Maior of the Comm nalty, and Citizens of the City of *London*, and rough of *Southwarke* in the County of *Surrey*, or to Deputy, greeting.

Shrewsbu

Shrewsbury.

To the Bailifs of our Town of *Shrewsbury.*

Stratford upon Avon.

To the Bailife of our Burrough or Town of *Stratford upon Avon*, and alſo to the head Alderman of the ſame Burrough, or Town and common Clark there.

Southmolton.

To the Major and head Burrgeſſes of the Burrough of *Southmolton*, greeting.

T.

Talboth.

TO the Bailifs in Court of *Talboth* or Town of *Biſhops Lenne*, greeting.

Taveſtocke.

To the Steward or bailifs in Court of the Earl of *Bedford*, his liberty of *Taveſtoke* greeting.

Totnes.

To the Major of the burrough of *Totnes*, greeting.

Tower of London.

To the Conſtable holding the place of the *Tower of London*, and alſo the Steward of our *Court* there, greeting.

Truroe.

To the Major and Burgeſſes of the Burrough of *Truroe* in the County of *Cornwall.*

Trematon.

To the Steward of *Trematon* in the County of *Devon*, or to his Deputy, holding the place there, greeting.

Torrington.

To the Major, Aldermen, Burgeſſes and Steward of the Burrough or Town of great *Torrington.*

Tewkesbury.

To the Bayliff and principall Burgeſſes and Steward of *Tewkesbury* in the County of *Glouceſter.*

Uske.

TO the Major and Bayliffs of the Town or Burrough of *Uske* greeting.

W

Wallingford.

TO the Major and Burgeſſes of the Burrough or town of *Wallingford*, greeting.

New Windſor.

To the Major, Aldermen, Bayliffs, and Steward of the Burrough of *New Windſor*, in the County of *Berks* to either of them, greeting.

Woodſtock.

To the Major of the Town of *New Woodſtock.*

Wye.

To the Steward in Court of the Mannor of *Wye* in the County of *Kent*, greeting.

Witteroll.

To the Bailiff in Court of *Witteroll*, greeting.

Wincheſter.

To the Major, Bailifs, and Commonalty of our City of *winton*, greeting.

Worceſter.

To the Major, Recorder, and Aldermen of our

r City of *worcester*, greeting.

Wenlock.

To the Bayliff and Steward of the Town and liber- of great *wenlock*, greeting.

Wigmore.

To the Steward and bailiff of the Town and Bur- ough of *wigmore*, in the County of *Hereford* gree- ing,

Warwick.

To the Bailiffs and Recorder of our Burrough of *arwick*, greeting.

Weſtbich.

To the Keeper of our Priſon and Caſtle of *weſtbich* to his Deputy there being, greeting.

Theſe are the ſeverall titles of ſeverall Corporati- s which happily may ſome of them alter in ſome rticular, by reaſon of renuing their Charters d having larger Grants, by which they are incor- rated anew, and which may alter the title, of which e Attorney muſt the beſt he may, informe him- lf.

Some few rules have been omited, which concerne at hath been premiſed concerning actions of debt, d may be of much uſe in other actions; which take follows, and firſt of Amerciaments and of the E- eating of them.

NOte that if the party be arreſted, and at the return of the Writ the Sheriff return (that he th taken the body of the Defendant which he hath dy, *&c.*) and yet the Defendant appears not, u may if the Sheriff will be ſo content, take the nd of appearance given to the high Sheriff, and ve it aſſigned to you, & ſo you ſhal be inabled to ſue

the Defendant and his Sureties in the high Sheriffs name, or if you will not ſo do, or the Sheriff will not let you have the bond, then you muſt give the Sheriff a day by rule to bring in the body, &c. in the Prothonotaries remembrance, which if he doe not, he ſhall be amerced, and then you may ſue out an *Habeas Corpus*, with the Prothonotaries Clarke, and if he bring him not in upon that, you ſhall continue amercing of him, and in caſe the Sheriff returne that he is (*Languidus in perſona*) That is to ſay, that he is ſo ſick he cannot bring him, then if it be found a delay, iſſues forth a *Duces tecum*, &c. and ſtill upon the amerciament you ſhall increaſe iſſues untill you force an appearance: But you may have your *Habeas Corpus* and alſo give your rules for amercing the Defendant as well in the Phillizers, as in the Prothonotaries office.

When you come to the eſtreating of your amerciaments you muſt ſee them entred with the Philizer or Prothonotary where the rule was given, and then the clark of the warrants through whoſe office this prothonotaries Rolls paſſe, whereby he may take notice of the Defendant his (*Miſerciordia*) or being in mercy upon Judgements, will certifie the amerciaments as he doth all other of that nature of courſe into the Exchequer But if it be in the Phillizers office, you muſt get a certificate from the Phillizer to the Clark of the warrants who wil return it into the Exchequer where the Sheriff ſhal, when he paſſeth his account, be inforced to pay it.

NOw if the Sheriff who made the arreſt be out of his office before you make your proceed or have appearance you ſhal have a Writ caled a *Diſtringas nuper vicecomitem*, that is to ſay, a deſtraining of the late Sherif, which writ muſt be ma-

t of that office whence the laſt proceedings were d.

NOte, that every Attorney, Clark, or Officer t the Court, may have an attachment of Priviledge which is to be made in one of e Prothonotaries office, and muſt be made turnable at a day certaine, and is as effectuall on eir behalfe as an originall, for if the Debt be fine-le you ſave the fine, and although the Debt be all, or that it be any other action, yet ſhall you ld him to ſpeciall bayle, and upon a *Cepi* returned, u may proceede to amerce the Sheriff as is in other roceſſes.

NOte, that if you cannot arreſt the party upon your firſt proceſſe taken from the Phillizers, you muſt be ſure to ſee them ſo carefully continued, which ſts you four pence for each terme from the time taking them forth, for if upon a ſecond writ the De-ndant finde your Writ diſcontinued he may enter a ſcontinuance, and the want of any one continuance Errour at the time of the Judgment.

NOte that when you deliver unto the Defendant his Attorney, the copy of your Declaration, you e to ſhew your Bond, Bill, VVill, Letters of Ad-miſtration, Indenture, or other writings under ſeal, hereby you intitle your ſelfe, and this, for that you ve (*A Perfect. hic in curia*) of theſe Writings in ur declaration, which is in ſubſtance an acknow-dgment of them to be brought into Court, but if e Defendants Attorney receive the Declaration and en call not for ſight or hearing of the Bond, &c. d after pleads or takes an imparlance, you are

not bound afterwards to ſhew it him.

OBſerve further, that if yon bring your actio against two or more for one debt due upon on ſpecialty, when you draw yonr (*Precipe*) for th Carſiter take heed whether your ſpecialty be joynt ly or ſeverally; Joyntly thus, (we binde us ou Heires Executors, *&c.*) or (*Obligamus nos heredes* &c,) not having therein the word either of u then your originall muſt be, and ſo your Declaratio (that they render to the Plaintife ſo much money *&c.*) but if the ſpeciality be, as is moſt uſuall, joynt and ſeverally, then muſt your *Precipe* be ſeverall, an then muſt you make delivery, and enter ſo many ſe verall Declarations as there are Defendants in yo Writ.

NOte that in Actions of Debt upon *Emiſſet*, fo wares or Merchandizes, or other things upo *Mutuatus*, for money or other thing lent upo an *In ſimul computaſſet*, Actions of Treſpaſſe, Ba tery or upon the caſe, *&c.* you are not tyed t lay the certain day; but you may lay it any time a ter the cauſe of Action accrued, and before the *Te* of your Originall, but in an *Ejectione firme* the date o the Demiſe muſt be your guide, from which you mu not vary.

NOte that as I ſaid before, there are ſom Actions reall, ſome perſonall, ſome mix whereof ſome are locall, as tyed to be layed i the County where the cauſe of action accrued; eve ry perſonall action as an action of debt, treſpaſſe Covenant, Battery, *&c.* may be commenced an layd in any County whatſoever, according as th Plaintiff pleaſeth, although both the Plaintif and De

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fendant do dwell out of the ſame; but every reall and mixt action is to be laid in the ſame county where the cauſe of the ſaid action ariſes as before, or where the lands and tenements do lye, &c.

The like courſe muſt be taken to continue an iſſue joyned and entred upon the roll from tearm to tearm as before was ſhewed in the caſe of imparlances.

NOte that when you declare upon ſeverall ſpecialties, in the cloſe of your Declaration upon the (profect ic in cur.) you muſt mention their ſeverall dates.

NOte alſo, that if ſeverall Defendants appeare by one Attorney, who are bound in a Bond joyntly and ſeverally, if they declare ſeverally againſt them, yet the condition muſt be recited but in one of the Declarations; but if they appear by ſeverall Attorneyes you muſt inſert the condition to all the Declarations.

AND note, that in many of the foregoing actions of Debt, you ſhall do very well, it is the ſafeſt way for your Clyent to make actions of the caſe of them by indebitat aſſumpſit, where if you prove the money lent, or wares delivered, &c the law implyes the promiſe, and in that caſe the Defendant is barred from waging his Law.

AND note further, that if you bring an action of debt againſt one within age, he may plead in Bar that he is within age, but in caſe it be for neceſſaries, as Meat Drink, Apparrell, &c. there is no Bar to the Plaintiff.

And in caſe any one is ſued who is within age, he muſt defend himſelf by his Guardian; and if he will

ſue, it muſt be his *Prochein amie*, or next of kindred.

NOte, that you may ſue an Heire as well as the Executor or Adminiſtrator for the debt due by the Obligor; but in caſe you cannot finde any lands to diſcend unto him, he pleading Viens per diſcent (that is, hath nothing diſcended unto him) he ſhall not be charged.

If money be payable upon demand, there in that caſe it muſt be demanded before you can ſue, and the Plaintiffe muſt lay a demand in his Declaration, and the action accrues by vertue of that Demand.

NOte, that if a man ſhall bring an action either upon bond, bill, or otherwiſe, upon which he formerly had judgment, the Defendant may plead the former judgment in Bar, and it may be held good.

NOte how and to what caſes you may plead the Statute of Limitations which will guide you to bring your actions within the time limited, or to cauſe you to forbear bringing them at all, all actions of Debt, Account, Detinue, Treſpaſs, Replevin, and all other Actions of the caſe, unleſs for words, muſt be put in ſuit within ſix yeares after the cauſe of action; all actions of Aſſault and Battery, and Imprisonment are to be put in ſuit within four years after cauſe of action, and all actions of the caſe for ſcandalous words within two years after the words ſpoken, if in any of theſe caſes they be brought after the time limited as above, the Statute of the 21 Jacobi pleaded, is a good plea in Bar to any of them, no time limited for ſpecialties.

If

If a man Arreſt another or cauſe him to be Arreſted in another mans name, without the conſent of the party in whoſe name he is Arreſted, the Statute gives an action of Debt to the Party ſo Arreſted.

An action of Debt lyes by the Statute of 2. *Edw.* the ſixth, *Cap* 13 For a Parſon againſt his Pariſhoners for not ſetting out of Tythes, upon which action the Parſon ſhall recover the treble value of the Tythes ſo carryed away unTythed.

An action of Debt by the Statute of 32. *Henry* the 8. Chapter the thirtyeth, lyes againſt an Attorney for not filing of Warrants of Attorney, in the Cauſes he is towards.

Where no place of payment is ſet down in a Bond, there the Obligor muſt be inforced to finde out his Obligee, to pay him the money.

We now proceed to actions of Detinue; wherein we ſhall need to ſay the leſs, for that the ſame Rules that have been given in actions of Debt, either in relation to the Proceſs or the manner of declaring do hold in this, the one being in the *Debet* and *Detinet*, and the other the *Detinet* only: And this action properly lyes where a man delivers Goods or Chattells to another to keep, and the Party to whom they were ſo delivered, refuſes to redeliver them.

And obſerve that in this action of Detinue, you ought to aſcertaine the thing, as a Horſe, Cow, or other Cattell, or Cattells, naming them, and making them certaine, for that the Plaintiff is to recover the thing detained, and therefore it muſt be ſo certaine, as it may be known; for money delivered, an action of Detinue lyes not, but an action of account, and your Originall in this action runs thus.

THE

THE *Keepers*, &c *To the Sheriff of* H. *greeting. Command* J. G. *lately of* L. *in the County of* H. *Yeoman, that juſtly and without delay, he render* T. B. *one Cow, which he unjuſtly detaines*, &c.

If for a mans Evidences of his Land, in a Box or Bag ſealed up, in which caſe alſo an Action of Detinue lyes then the Writ runs thus,

THat juſtly and without delay he render him one box, with Deeds, VVritings, and other Muniments in the ſame box contained, which he unjuſtly detaines, &c.

The Defendant hath not in this action that variety of Plea as before in Debt, the moſt uſuall Plea being (that he detaines not the thing ſued for) and upon this he puts himſelf upon the Countrey to be tryed and the Plaintif in like manner, *&c.*

Note that in this caſe, if the Plaintif have a Verdict, his Judgement is a recovery of the thing detained, or the value thereof; in which caſe, as alſo where the Judgment is had by default for want of pleading, there is after the judgement had, a VVrit of inquiry awarded, to inquire of the value of the thing detained: Upon the returne of which VVrit of inquiry, what value the Jury finde the thing of; and what damages they give him for the detainder of it, is together with increaſe of Coſts entred upon judgment.

Note that a man may wage his Law in an action of Detinue, as formerly in debt was ſhown, wherein the ſame courſe for the manner of the wager of Law is to be obſerved as before.

But it is otherwiſe in caſe you declare for one Evidence in ſpeciall, delivered by the Plaintiff to the *&c.*

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Defendant; in this case the Defendant shall not wage his Law.

Note that in case of Evidences detained, it is not proper for the Executor, nor hath he any Right to this Action, but the Heire who is to have the Lands.

Note that if it be of any thing delivered to be kept whether by the immediate party that brings the Action, or his Father; Ancestor, *&c.* Properly this Action lyes if detained, but otherwise an Action of Trover and Conversion.

In the next place we come to Actions of Account.

THis Action lyes upon severall occasions, as against one that his Guardian in Socage, against one as Receiver of monies, either by way of Rents or otherwise, or as Bailiff of an Office, or as Bailiff in general: in all which cases, you must be sure to frame your Action rightly, by informing your self for what time he continued Bayliffe, receiver, *&c.* Of what his charge was, and what it amounts unto, and when he entred upon such his charge.

To begin with Guardian in Socage, your Process is by Summons, *Capias ad computand, &c.* And you declare upon the Statute of *Marleridge*, the eighteenth Chapter, of a Plea, that whereas by the common Counsell of the Kingdome of our Lord King of *England*; it is provided for, that the Guardians of the Lands and Tenements which are held in Socage, should render their reasonable account of the Issues and Profits of the said Lands, to the Heires of the same Lands and Tenements, when they come to full age, *&c.*

They

The intendment of Bailif is one that hath the Administration and charge of Lands, Goods, or chattels to make the best benefit for the Owner; against this Person properly lyes an action of account, for the profits which have been made or raised, during the time he hath had the care of them.

And observe this, that a Baylif may be charged to account, and accordingly doth account, and upon account, nothing doth appeare to be arreare in his hand but rather the Plaintif indebted to him, in which case the baylif shall bring his action of debt, for the surplusage of what he hath expended and laid out over and above his Receits.

If I appoint a man to receive money to my use, to render me an account, I shall have my action of account against him for the said moneys, he also having his reasonable Expences and Disbursements

Wher a man declares against one as receiver of moneys, & he must ascertaine by whose hands the money was received; which lyes not against a Baylif, and if the receit be from any hands, other then the part Plaintif, the Defendant shall not wage his Law, but if it be alledged to be received by his own hands, and not by another mans hands, in this case the Defendant may wage his Law.

Where there be two Copartners in Merchandize that occupy and Merchandize in common, by the Statute, one shall have his action of account against the other, they be ng both named Merchants.

Where there be two Joynt-Tenants, and the one makes the other Baylif of his Moyety, in this case, he that makes the Baylif may bring his action of account.

The Executors of a baylif or receiver, are not chargeable with an Account.

An account may be brought against the Collector

ctors, for money given to the uſe of the poore.

Note that if a man brings his Action of Account gainſt one as Bailiff, and the Defendant to his actin pleades, that he was never his Bailiff to render an ccount, *&c.* And upon that Iſſue joyned, and upon he tryall a Verdict for the Plaintiff, in ſuch caſe the udgment is, that the Defendant ſhall account with he Plaintiff of the time and profits aforelaid, *&c.* nd that he be in mercy, becauſe he did not ſooner ccount.

Upon his Verdict and Judgement, the Court aſgnes Auditors, before whom the Defendant is to ccount upon ſuch a day or time, as the Auditors ſhall ppoint to here the Account; and in the *Interim* he party either puts in Baile to account, or otherwiſe ſtands committed to the Fleet.

NOte that if the Defendant acknowledg the action and that their be Auditors aſſigned by the Court, in this caſe he ſhall not be inforced to put in ayle.

There are two Pleas moſt uſuall in theſe actions of ccount, the one is (that he was never his receiver, c.) And the other (that he hath fully accounted, c.)

Note that the Auditors aſſigned by Court, have ower upon his accounting, to make him allowance f what reaſonable Disburſments and Charges he ings in, as laid out, and if after the Defendant be ver and above in arreare found by the Auditors he Plaintiff may bring his action of Debt, to which is before ſaid the Defendant ſhall not wage his aw.

In an action of account a man may plead doub-, as where he ſtands charged to have received ſerall moneys, ſeverall times from divers Perſons, there

there he may plead as to part (that he ſtood not B liff, *&c.*) and as to the other part (that he ha fully accounted, *&c.*) Upon the joyning of whi Iſſue, it being double you ſay; Therefore as to t trying as well of this Iſſue as the aforſaid other Iſſ formerly joyned, Command is given to the Sheri *&c.*

Note that an Action of Account lyes againſt Church-Warden after he is out of office, by the ſu ceeding Church-Warden to be brought.

Where an Infant within the age of fourte yeares, being ſeized of Lands in Socage Tenure, Stranger enters into the Lands of the Infant, a takes the Profits of the ſame, though he be not t next of Kindred nor Guardian in Socage, yet t Infant ſhall charge him as Guardian in Socage; a it is no Plea for him to deem that he is the next Kindred, but he muſt anſwer to the taking of the pr fits, the Writ being that he ſhould render his reaſo able account of the Iſſues and profits, coming of t Lands and Tenements in S. which are held in S cage, *&c.*

Note that if it be for the profits of the Land, f the time after the Infant is come to fourteen yea of Age, he muſt be ſued as Bayliffe, and not as Gua dian.

Note alſo that if any man have cauſe of Action Account againſt any as Receiver and Bailiffe, and d his Executors ſhall have this Action.

This Action may likewiſe be brought in the Cou ty where the cauſe of Action ariſes, and if ſo brough it may be removed into the common Bench, at t Suit of the Plaintiff, by a *Pone*, without ſhewing t cauſe in the Writ, but it ſhall not be removed at t Suit of the Defendant, without ſhewing the cau in the Writ of *Pone*, as if the Defendant have releaſ

d then it ſhall be named in the *Pone*, &c.

An Apprentice ſhall not be charged with an acti- of account, but if a man have a Servant whom e commands to receive Money, the Maſter ſhall ve a VVrit of account againſt him if he were his ceiver.

The Fees incident to this Action, and the proceegs thereupon, follow in a table amongſt others.

Actions upon the Caſe:

Theſe Actions are very numerous, and grounded upon ſeverall occaſions, as for ſcandalous words, promiſes not performed, for ſpeciall Nuſances, . The Proceſſe upon them are; firſt an Originall, d then by way of *Capias*, if you can arreſt upon firſt Proceſſe, if not, then you may proceed to Outlawry, as before in Debt, only the charge will ore in reſpect of the length of your Proceſſe, and return of thoſe VVrits, you muſt returne (that Defendant hath nothing within my Bayliwick reby he may be attached) this for the Originall: d for the *Capias* and other Proceſs (that the Dedant is not found within my Bailiwick).

n Actions, of the Caſe for words, you muſt carey obſerve what the nature of the words are, what y import, the manner of ſpeaking of them, and t the party Plaintif may be any wayes damnified he ſpeaking of them, what his credite was, and impaired and take the whole words as neere you can; and before you bring your Action, the witneſſes ſet down the words as they were ken, and as they will be able to prove them, and time and place when and where they were ſpoken, before whom: This Action oftentimes miſcarres, by

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reaſon the Attorneys weigh not well whether the words be actionable or not, and many times, though ſome part of the words taken by themſelves may be actionable, yet the ſubſequent words may qualify the ſenſe of the precedent; as where a man ſayes of another, that he is a thiefe, and hath ſtolne ſomething of ſmall or no value: For generally where one ſtands charged by words for any theft, which is only criminall and not capitall, there the party plaintiff ſhall never enter Judgment, although he brings his action.

An action of the Caſe lyes againſt the Husband and Wife for words ſpoken by the wife, but in caſe the Wife be arreſted and not the Husband, you can not declare.

This Action lyes in theſe ſeverall caſes following.

WHere one becomes Surety for another at his inſtance and requeſt upon Bond, and he ſaveth him not harmleſſe, but the ſurety is inforced to pay the money, in this caſe he may bring his action upon the caſe, wherein he muſt recite how ſuch a time at ſuch a place, at the inſtance and requeſt of the Defendant, he became bound to ſuch a one in ſuch a ſum conditioned for the payment of ſuch a ſum at a day then to come, and that the Defendant in conſideration thereof, did aſſume and promiſe to ſave him harmleſs; that notwithſtanding the promiſe aforeſaid, he hath been ſued by the Obligee, and ſhew how and where and what he is dammified.

It lyes where a contract is made betwteen two by word of mouth, either for the delivery of Corn, Cattell, or any Merchandize whatſoever, and the party that promiſes ſo to deliver it, makes breach.

It lyes for money borrowed, when you would ma[ke]

ure the Defendant ſhould not wage his Law.

NOte that in all Actions of the Caſe upon ſpeciall promiſes you muſt be ſure to lay a good conſideration to ground your promiſe on, otherwiſe it is ſaid o be *Nudum pactum*, as where it is for Money owing y a ſtranger, and his Friend promiſes payment upon orbearance, there you muſt lay, that whereas ſuch a ne was indebted to the plaintif in forty pounds, and hat for the more ſpeedy obtaining of the ſaid Debt; he Plaintif intended to implead him, and that in onſideration the Plaintif would forbear to ſue implead the party owing the Money for ſuch a me, the Defendant himſelfe would pay it in caſe the ther did not.

It lies for money promiſed in conſideration of marage, wherein the Plaintif muſt aver, that he marryd her ſuch a time.

To call a man a Baſtard if he be the Eldeſt Son, and a capacity at the time of the words ſpoken, to inherit n Eſtate after his Father, and be diſinherited, an Actin lyes.

To call a maid whore, or to ſay ſhe hath a baſtard, hereby ſhee loſeth her preferment in marriage, is kewiſe actionable.

To call a married wife whore would not formerly old action at common Law, but in *London*, by ſtome it hath, but *Quere* whether it will not now be tionable in reſpect of the Statute, that makes the ime capitall.

If a man ſpeaks ſcandalous words of any, for which action brought againſt him; if the Defendant be le to make proof of the words ſpoken, he may plead ſpeciall juſtification; but if he plead ſuch plea, and ake it not good, the damages will be much aggravad thereby.

If the Defendant ſpake other words then what are layed in the Declaration, he muſt plead eſpeciall and traverſe the word layd in the declaration; but quere, whether both caſes by this late act he may uot plea the generall iſſue, and give the ſpeciall matter in evidence.

Where the Defendant pleads the generall iſſue which is not guilty for words ſcandalous, *&c.* ther it reſts on the Plaintiffs part, to prove the words as he hath layd them.

It hath been uſuall, and yet is the courſe to arre upon a *Clauſum fregit*, & then upon filing a new Or ginall, to declare ſpecially in an Action of the caſe.

It lies for the hire of a horſe, which is returned bac and the hire unpaid.

It lies likewiſe, where a man abuſeth a horſe b immoderate riding, or otherwiſe by miſuſing him.

The party likewiſe that hires a horſe if he ha given earneſt for the Horſe, and that it bee promiſ him, it ſhal bee delivered unto him by ſuch a time, a then he refuſes to deliver him, whereby he is diſa pointed.

It lies for the Maſter againſt his Servant, for leavi off his ſervice, before the time contracted for to be e pired.

Likewiſe for a ſervant in caſe the Mr. without i cauſe ſhall turne him out of ſervice, before his time expired.

It lies for a mutuall contract made between tw by word of mouth, and to bind the ſame, a piece money is given by the one to the other in earne now if either will not perform what is agreed upo the other may bring his action of the caſe.

It lies, where a man upon ſale of ſheep, warra them ſound, and they prove rotten, or otherwiſe u ſound.

An action of the caſe lies where one ſells a Horſe, and warrants him to be ſound, and the horſe proves to be unſound at the time of the ſale.

It lies againſt a Farrier, who ſhooes a horſe and pricks him, whereby he grows lame.

It lyes where a man who is a Gaoler, lets a Priſoner at larg, and this as well as eſcape.

Where a man hath made a Diſtreſſe of Cattell, &c. and is driving of them to the Pound, and another comes and reſcues them, an Action of the Caſe lyes.

It lyes againſt any that ſhall intice his Covenant-ſervant from him.

If a man loſe goods brought into a common Inne, or Hoſtrie houſe, an Action of the Caſe lyes.

If a man deliver goods to a Carryer, & agree upon the rate for carrying, and they are loſt, & miſcarried, an Action of the Caſe lyes.

It lyes for ſtopping of a Water-courſe through his Ground, whereby the Plaintiff watered his Beaſts and did other neceſſaries, and if this be ſtopped either by Stones, Turfes, or otherwiſe diverted, an Action of the Caſe lyes.

If a man ſtop up a way, whether Cart way or Foot-way, and another hath right to that way, and can prescribe to it, an Action of the Caſe lyes.

Where a man is to pay money, and gives a Bill of Exchange which is not accepted, but afterwards comes to be proteſted, an Action of the Caſe lyes.

Where a man ſells another mans Cattell or goods, or Merchandizes, and warrants them to be his own, an Action of the Caſe lyes.

An Action of the Caſe lyes againſt a Taylor, who doth undertake to make cloathes, and ſpoyles them, ſo that they are not uſefull for the Party they are made for.

It lies againſt an Executor upon the promiſe of th Teſtatour, provided there be a conſideration to groun the promiſe on.

It lyes in the behalfe of a Commoner againſt an that hinder him from uſe of his Common.

VVhere a man hath an Office granted unto him, another either diſturbes him in the Execution of h place, or otherwiſe receives the profits due to the o fice, an action of the caſe lyes.

It lies againſt a cheat, for playing with fal Dice.

Where a man diſturbs the keeping of a Court Le an Action of the caſe lyes.

It lies againſt an under Sheriffe for an ill or fal return.

It lies againſt an unde Sheriff, who makes return Writs within any Liberty granted to another.

It lies on the behalfe of a Phyſitian or a Chirurge for Phiſick or performing a cure.

Where a man builds a houſe ſo neer his neighbour or raiſes any ſhed or other out-houſe, or layes piles wood, or Stacks of hay or corne ſo neer his neig bours windows, as that they ſtop up his light, an acti of the caſe lyes.

And for any other nuſance, whereby a man is a wayes damnified, as where a man builds a ſtable privy houſe ſo neer his nighbours houſe, that the ſm thereof annoyes him.

It lies againſt an under Sheriff, for taking great Fees then is allowed by the ſtatute.

It lies againſt one who ſhall break down a ma Wall or Sluce whereby his land comes to be dro ned.

It lyes for ſelling corrupt Wine without warranti it to be good, for that it is prohibited by law.

It lies where a man hath pawned goods and re

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ers the money due, and demands his Goods, and it ill not be accepted.

It lies for not carefully keeping fire, whereby a mans ouſe who is a neighbour comes to be burned either in art or whole.

It lies for digging of lime pits.

It lies againſt one for keeping a dog that worries eep.

It lies for a Soliciter for his Diſburſements and ees.

It lies ſo many ſeverall wayes for promiſes, as that ey are not to be named in particular, but are to be awn as the caſe falls out, only obſerve ſome particu-rs following.

It lies where a man for mony lent upon forbearance, omiſes to become ſecurity.

It lies upon a promiſe to pay mony for land contra-ed for.

It lies againſt any one that makes an arreſt in a li-rty not being Bayliff.

It lies for the Lord of a Mannor in ancient demeſne ainſt a Tenant that levies a fine above in the Com-on Pleas.

It lies in the nature of an action of conſpiracy one indicted of Felony, and afterwards acquit-d.

It lies againſt a Steward of a Court for not taking urity in Replevin.

It lies againſt the Husband and Wife for meat, ink, *&c.* had by the wife before the intermar-ge.

It lies for a Keeper of a priſon for meat and Drink d by a priſoner.

It lies againſt an Attorney or Clark of the Kings nch for appearing or filing a bayle without VVar-nr.

It

It lyes likewise against an Attorney that shall do ny act in any mans name, whereby the party is pre dieed in relation to the law, without Warraut had.

It lyes for erroneous prosecuting a Writ of Exec tion.

It lyes also against an Officer who takes money extortion.

It lyes for a rescue made upon a *Capias*, or other pr cesse whatsoever.

It lyes against the Sheriff for not returning a *Ven tioni exponas*.

It lyes likewise on the behalfe of an Excutor gainst an under Sherift, for returning falsly a *Deva vit*.

If a man sells cloathes, and warrants them to be such a length, if they hold not out accordingly, h which buyes them, may bring his action upon t case.

If one take a mans cattell, and another take th from him, an action of the case lies by way of T ver and conversion for the cattell

An action of the case lies against Tenant at w who commits wast by burning houses, or pulling th down, but not an action of wast.

An action of the case lies against a Bayliff for kill or spoiling any of his Masters cattell.

If a man deliver to another his Sheep to dung land, or his oxen to Plow his Land, and he kill them, an action of the case lies.

An action of the case lies against a Sherif, wh the Plaintif hath a Charter of exception, that shall not be impannelled upon any Jury, and she that to the Sheriff, and yet he impannells him.

If the Sheriff upon a writ of second deliver to the plaintif of the distresse, and will not return

Writ, ſo that the defendant may conſtrain the plaintif to come and declare, ſo that he may avow, the Defendant ſhall have his remedy by action of the caſe againſt the Sherif.

Actions of the caſe lyes againſt a Sherif, where he makes a *Precipe* to one who is no Baylif of the Franchiſe, who returnes a Jury which is quathed, to the damage of the plaintiff.

Where a Guardian pleads falſely for an Infant, or vouches one who is not ſufficient to render in value to the Infant, the Infant ſhall have an action of the Caſe.

An action of the Caſe lyes againſt a Chyrurgeon, who undertakes to cure a man of a wound, and neglects it, Whereby a man grows worſe, and makes it through his negligence incurable.

Where a man promiſes in conſideration of an hundred pounds, or any other ſum in hand paid, to enfeoff another in ſuch and ſuch Land, by ſuch a day, and doth it not, he ſhall have an action upon the Caſe.

There are many other caſes wherein action of the Caſe lyes, which cannot be certainly recited, in reſpect of the various occaſions of them; but in theſe before recited, and all others, the proceed is one and the ſame, onely the Declarations muſt vary as your Caſe requires; after your Declaration drawn, upon appearance made, you deliver it to the Attorney for the Defendant, and moſt uſually with an Imparlance which done you enter it accordingly of that Terme you deliver your Declaration, upon one of the *Prothonotaries* Rolls, and then Docquet it, and keep the number Roll by you, whereby you may be able to continue your Imparlance if need be.

The Terme following you give a Rule within ſome ſhort time of the beginning of the Terme, with the

Secondary of the Office for the Defendant to plead by such a day, or otherwise the Plaintiff have Judgement.

There is not much diversity of pleading to this Action, especially since the late Statute, the most usual Pleas are either Not guilty, or in case of promises *Non assumpsit.*

Either of these being pleaded, you make up a Copy of the Issue, and deliver it to the Defendants Attorney who is to pay for the Copy of the Issue, as before for the Declaration, four pence for every sheet, and also to pay for entring his Plea two shillings, that done if you intend to try it, you must give warning to the Attorney of the Defendant when you intend to try it and in order thereunto make out your *Venire Facias* and get it returned by the Sheriff, and then sue out your *Habeas Corpus*, and so proceed to the making up your Record; and in all other things, both before at the tryall, and after, as you are directed before in the case of Debt

But in case they plead not, but let it goe by default then upon the entring up of your Judgment you are to award a VVrit of Inquiry of Damages, returnable some returne the Terme following, which done, you make out your writ and procure it to be signed with the *Prothonotary*, and then Seale it, and bee careful to keep your number Roll likewise of your judgment when you have Docqueted it.

Note that you are to give notice to the Attorney of the Defendant of the time when you intend to execute your Writ of Inquiry, if you practise fairely.

And having so done, and brought your writ under Seale, and delivered it to the Sheriff, you may proceed upon it according to the time agreed on.

The Sheriff to summon an Inquest, who are

quire what Damages the party Plaintiff hath ſuſtained, as alſo for his Coſts and Expenſes of Suit.

The Inqueſt having paſſed, if the Sheriffe draws ſhort ſchedule, and annexes it to the VVrit of Inquiry, and returns the Writ of Inquiry, which is called n Inquiſition, which he delivers you upon payment his and the Juries Fees.

Having your Writ of Inquiry thus returned, and e Inquiſition annexed, you muſt bring it to the rothonotaries Office and there take it out in the ill of Pleas, together with the Return and Inquiſion, and give a Rule upon it, which done and the ule out, you carry to the Prothonotary, and he taxth your Coſts, and then you pay him for it, and car- it to the Clark of the Judgments, and be ſure you ive him likewiſe your number Roll, and Term when he Judgment was entred, and he will make you out, ither a *Capias ad ſatisfaciendum*, or a *Fieri facias* for our Damages and Coſts. The Fees incident to this ction, you wil follow.

Actions of Trover and Converſion.

THis Action is called alſo an Action of the caſe, and differs not at all in the Proceedings om what hath been ſaid before, in Actions of the aſe.

It properly lies where the Defendant hath found ny of the Plaintiffs Goods, and refuſeth to deliver iem upon demand, or where the Defendant comes by he Goods, by the delivery of any other then the Plaintif, wherein he ſhall recover as much Damages as he Goods are worth.

It is not as in an Action of Detinue, that the thing ſelfe, whether Goods or Cattell ſhall be recover-

ed,

ed, but Damages to the value of them.

Note that a demand is absolutely necessary to th action before it be brought.

In this action if the Defendant plead that he is n guilty, which is the most generall Plea in this actio the property of the goods must be proved to have be in the Plaintiff, before such time as they came to th Defendant his hands.

This action is now very usuall, and takes place i stead of actions of Detinue, for in them the Defenda was at liberty to wage his Law, whereas this debt him.

In many Cases a speciall justification may be ple ded to an action of Trover, as where a man justifi the taking of it as a Stray, and refuseth not to deliv it, being a Horse, Sheep, or the like, upon payment f their Meat and keeping.

Many times in this action, the arrest is made upon *Clausum fregit*, and then file a new Originall, and declare in Trover; or in case you cannot arrest, y may sue to an Outlawry.

VVhere a man brings his action of Trover and co version against another, with whom he findes any his Goods lost or purloyned, here if the Defenda brought them in open Market or Faire, and that th be tolled in the Book, this alters the property of t Goods, and I can never recover them, but this must specially pleaded,

Otherwise it is where they are bought privatly a not in open Market or Faire, by this there is no pr perty altered.

It is generally held, a mans shop is said to be pen Market; but if Plate be stollen and sold to a other Tradesman, or in any other shop, then the Gol smiths to whom it is proved to buy it, it hath been held the property is not altered, but that the Par loos

posing of it, may recover the value of it in Damages by action of Trover.

All the proceedings in this action are generally the same immediatly before going in all particulars, whether it be by tryall at the assizes, or by Writ of Inquiry; which Writ of Inquiry, Inquisition thereupon, as that also in case are to be filed by the Clark of the judgments, with the *Custos brevium*, after judgment entred up,

In this action you must be carefull of the dayes when you lay the Plaintiff to be possessed, and what time after you lay it to be lost, and what time after the Conversion.

Actions of Trespasse and Battery.

THis action lyes where a man assaults another, and strikes, kick, or beat, or do him any manner of violence, either with hand, foot, or with any weapon, or throw any thing at him, or upon him, whereby he is hurt.

The writs in Battery are by way of originall *Capias alias, &c.* If not arrested upon the first Processe, you may take out a *Capias* by continuance, or otherwise sue to the Outlawry.

Your originall writ runs thus: VVherefore by force and armes on him the said Plaintif at L. he made an assault, and him beate, wounded, evill entreated, so that of his life he did despair, and other harms to him he did, to the great Damage of the Plaintif, and against the Peace, *&c.*

In some cases you adde (after wounded and Imprisoned) in case the Party were kept in Prison, and then in the Court, you name for what time.

In case you have the Party arrested, you must informe

form your ſelfe of the time when the Battery w done, and what the manner of the Battery was, a with what VVeapons, and whether the Party we Impriſoned, and what Damage your Clyent ſuſtai ed.

This done, and having an appearance (which uſually made on the Phillizers Roll, if the Atto neys take not one anothers word in the Countrey, o pnt their hands to the Sheriffs VVarrant for to a peare according to the returne of the VVrit) yo draw your Declaration, which is no more but a re cital of the writ above, only in the ſecond place, whe you count upon the VVrit, you are to inſert the tim and when you ſay by force and armes, you then add (that is to ſay, with Swords, Staves, and Knives) an if the Party were Impriſoned, you then ſhew, ho long and whether he were forced to pay a fine for h redemption, your Declaration drawn muſt be deli vered to the Defendants Attorney, as before in caſe &c. And you muſt enter it with an Imparlance, if yo give one.

And you are to give Rules, the Imparlance out and call for anſwer, and make up your Iſſue, or fo want of pleading, enter up Judgment by default, an take your writ of Inquiry; in all things obſerving th Rules before given, either for tryal or proceeding wit your VVrit of Inquiry.

The generall Plea to this action is, not guilty, bu there are ſeverall other Pleas, in juſtification of a mans ſelfe, as where it is done in defence of a man perſon or Goods; alſo a man may juſtifie, in the de fence of the perſon of his wife, Father, Mother, o Maſter: But note that if it be not in theſe Caſes, o in the Maintenance of Juſtice, if hee be not con ſtrained by a neceſſary cauſe, he is puniſhable if he bea another.

If a man come into anothers Houſe againſt his will, and there offer violence either to his Wife, Children, Servants, or to any of his goods, he may lawfully thruſt him away, to hinder him, and if he bring an Action in ſuch like caſe, he may plead ſpecially as the Caſe was, and conclude that to hinder him, or put him out of doors, he did (*Molliter manus imponere*, &c.) that is, ſoftly lay his hands upon him.

To all ſuch ſpeciall Pleas it is uſuall they ſhould be pleaded under Councels hand.

Where a man for preſervation of the peace, goeth about to part a Fray, by holding either of the parties from ſtriking, in caſe the Party that was ſo holden, do bring an Action of Battery, the Defendant may plead ſpecially, that to preſerve the perſon of one from killing, and preſervation of the publick Peace, he did come in to ayd him, and did ſoftly lay his hands upon him.

To this the Plaintif may reply, that he did it of his owne proper injury, without any ſuch cauſe, and then the Defendant muſt maintain his Plea, with an (*ut prius dicit*,) And of this he puts himſelfe upon the Country, *&c.*

There is a Plea called (*Son aſſalt demeſne*) which is where a man juſtifies in his owne defence, as being firſt ſtruck, which falls out to be very frequently pleaded. Thus much for Battery.

Of Treſpaſſe in generall.

These are the moſt generall Actions next Actions of Debt, that ar brought, and vary in the orinall Proceſſe and Declaration, according as the Treſpaſſe

Treſpaſſe is, and the cauſe of Action thereby a
crued.

It may be brought for breaking the Cloſe, witho
adding auy manner of other Treſpaſſe

Sometime for breaking both Cloſe and Houſe,
which caſe the Originall is; Wherefore by Fo
and Armes, the Cloſe of the Plaintiff at L. he bra
and other harmes to him he did, to the great dama
of the Plaintiff, and againſt the publique Peac
&c.

You may lay it for ſeverall Treſpaſſes at ſeve
dayes, or one Treſpaſſe with (a *Continuando*) that
contiuning of it for ſome certain dayes or weeks, fro
the time laid in the Declaration.

It lyes for chaſing of Cattell, whereby they eith
dyed, or were bitten or worryed with Doggs.

It lyes for takingaway of Pales, Poſts, Rails, brea
king of Hedges or Fences.

It lyes for digging in a Leaden Mine, and taking
way the Oare, or for breaking the Ground, and diggi
there.

Where a man breaks an other mans Dove-cote, an
takes away Pigeons, an Action lyes.

For drawing a Cart and Horſes over any ma
Ground; where there can bee no way preſcribed for,
Action of Treſpaſſe lyes.

It lyes for fiſhing in another mans Ponds, an
for breaking the Pond, and letting out the wa
ter.

For chaſing in a free Warren, an Actio
lyes.

For breaking of a Cloſe, mowing of Graſſe, a
eating of Corne with a mans Cattell, this Actio
lyes.

For Treſpaſſe done in a Garden, by plucking

the Roots, *Roſemary*, *Lavendar*, and other herbes.

It lies in the behalfe of a Miniſter againſt any that hinder or oppoſe him, in carrying away of his Tithes.

It lies for impounding a horſe or other Cattell, and for giving them ſuſtenance in the pound.

It lies for taking away Hay in cocks, and Corne in ſheafes.

It lies for taking away of Horſes or any other like Cattell, wherein you ſay (of the price of ſuch, *&c.*) or the goods and Chattells, then you ſay to the value of ſo much.

It lies for breaking of the Doores, Windows, Walls or other forces of a houſe.

An Action of treſpaſſe lies, where one having right to a Toll in a market, and employs his Servant to gather it, and he is diſturbed in it.

It lies likewiſe where a man hath right to keep a Fayr, and is hindred.

It lies on the behalfe of one that hath return of writs within his Hundred, and hath a Diſturbance by any.

And where a man hath right to keep a Court Baron, and is any wayes diſtnrbed, this Action lies.

For digging in a mans Cole mines, and carrying away Coles, and for digging in a mans quarries, he ſhall have his Action.

WE E have now given you ſome particular hints in what caſe an action of treſpas lies, I ſhall now proceed to the proceſſes thereupon, which as I told you are by Originall, in the firſt place *Capias*, in caſe you can arreſt them, or otherwiſe to the Outlawry.

If you arreſt the party, and have an appearan you muſt draw your Declaration, wherein you muſt ſure to take perfect notice from your Client of th day when the Treſpaſſe was done, that ſo you m lay it to be done before the *Teſte* of your Origina and likewiſe how long the treſpas continued, that ſo there be Occaſion, you may lay it with a *Continuand* and whether there were not ſeveral Treſpaſſes at ſ verall dayes, and the place where the Treſpaſſe w done, in that Town or Pariſh, for from thence yo *Venue* muſt riſe.

To this action the moſt generall Plea is, Not gui ty, yet is there much ſpeciall pleading by way Juſtification or otherwiſe, but moſt uſually that after the common Barre hath been pleaded in an ac on of Treſpaſſe, and that there be a new aſſignme of the place, then they plead as to the Treſpaſſe the place of new aſſignment, either in juſtification ſ a Foot-way, or a Cart-way, or ſome other ſpeciall Pl *&c.* Or Not guilty to the new aſſignment: This ne aſſignment is uſed very oft, to cleer a Title, whi upon it comes in queſtion; here in caſe the Ti appeare to be the Plaintiffs, he ſhall recover D mages.

This action brings to the party Plaintiff if he re ver, Damages, but not recovery of any poſſeſſion, in the caſe of an *Ejectione Firme.*

All manner of Procedings after the Declarati any waies had, relating to this action, whether by tr of *Niſi prius*, or VVrit of Inquiry, upon default or co ſeſſion, are altogether the ſame with what hath be delivered, as to actions of the caſe.

Actio

Actions of Covenant.

THis Action lyes where an Agreement or Compact, is by Deed, Articles, or other Writing, ſealed between two perſons, where every of them is bound to the other, to perform certain Covenants for his part, and if the one of them holdeth not his Covenant but breaketh it, then he which findeth himſelfe agrieved, may have thereupon a VVrit of Covenant: And Couenants are either in Law or Fact.

A Covenant in Law is that which the Law intendeth to be done, although it be not expreſſed in words, as if a man demiſe any thing to another for a certain Tearm, the Law intendeth a Covenant of the part of the Leſſor, that the Leſſee ſhall hold all his Term againſt all lawfull Incumbrances.

Covenant in fact, is that which is expreſly agreed betwen the parties.

Alſo there is a Covenant meerly perſonall, and Covenant that is reall, as ſayes *Fitzherbert* in his *Natura brevium*, Fol, 145.

Covenant reall, is where a man tyeth himſelfe to paſſe a thing reall, as Lands or Tenements, where man Covenants to levy a fine of Lands; *&c.*

Covenant meerly perſonall is where a man covenants with anothr by Deed, to build a houſe or to ve him.

Note well that no Writ of Covenant ſhall be maintainable without eſpecialty, but in the City of *London* or in ſome other place priviledged by cuſtome uſe.

Note that a man may bring an Action of Covent upon a Letter of Attorney.

VVhere a Covenant personall is made to any and the Covenantee dyes, the Covenant being unperformed, here his Executor shall maintain an Action o Covenant.

The Heire shall likewise maintain an Action Covenant, where one had covenanted by writin with his Father, to Enfeoff him in certain Lands and doth it not,

The Processes incident to this Action is an Or ginall which is a Summons, for in this Action as Debt, you say (was summoned and not attach ed.)

Your Originall runs thus (Of a Plea that he hol the Plaintiffs Covenant betwen them made, accor ing to the force, from, and effect, of certain Inde tures betwen them made, *&c.*)

After your Originall taken out, you may have Capias, and if you arrest him not upon the Capias y may proceed to the Outlawry, as in other cases.

Upon appearance had, you must declare as in example following, wherein you must observe, t in this Action as in debt, you have (an *Alias dict* which must be made literally to agree with the denture.

Essex. ss.

J. *Glover*; late of *&c.* otherwise called *John G ver*, Gentleman, was Summoned to answer *M.* of a plea, that he hold to him Covenant betw them made, according to the force, form, and effe of certain Indentures between them made, *&c.* A whereupon the said *E.* by *T. G.* his Attorney sai That whereas by a certain Indenture made (such day, year, and place) between him the Plaintiff on the one part and the sayd I. of the ot part, which other part signed with the Seale of

si

me I. the aforesaid *E.* brings hereinto Court, the Date whereof is the same day and year: It is testified (reciting the whole Indenture, till you come to in Witnesse whereof) as by the same Indenture more fully appeareth: And the said Plaintiff saith, that although hee hath fulfilled and performed, all and singular the Covenants and Grants in the Indenture aforesaid above specified on his part to be fulfilled and kept in Fact the same *E.* saith, That within the aforesaid seven yeares after the making the indenture aforesaid, *&c.* (that is to say) Such a day and year, one *T. D. Esq*; then being of the learned Councell of him the said *E.* at *B.* aforesaid, in the County aforesaid, did devise and cause to be written a further assurance of the aforesaid Close with the appurtenances, to be made to the said *E.* a certaine Writing of release of the aforesaid Close of the appurtenances, to be made to the said E. by the said *J.* in which said Writing it was contained, that the aforesaid *J.* should remise, release, and allwayes for himselfe and his Heires, quit claime to the said *E.* and his Heires, the whole Right, Title, and Claim which he had, or at any time from thence following might have, of and in the aforesaid Close with the appurtenances: And the same *E.* afterwards, the same day and year at *C.* aforesaid, did request the aforesaid *J.* to seale, and as his Deed to deliver to the said *E.* the aforesaid VVritings of release in form aforesaid devised; and the aforesaid *I.* that to do, then and there altogether refused, against the form of the indenture aforesaid; yet the said *J.* although thereto required, hath not held the Covenant aforesaid (for that that he the said *J.* and his Heires, and all persons and their Heires, claiming in or by the aforesaid *J.* at any time, during the space of the aforesaid seven yeares, upon reasonable demand thereof,

to them or any of them to be made, shal make, perm
& acknowledg, or cause to be made, permitted, and
knowledged, all & singular act & acts, thing or thin
for the better and further assurance and sure maki
of the Premisses with the appurtenances to the s
E. and his assignes, as by learned Councell of him
said *E.* his Heirs or assigns, should be reasonably
vised, but hath broken it, and to hold that coven
to him the said *E.* hitherto hath denied, and yet d
deny, whereupon he saith that he is damnified, a
hath damage to the value of two hundred poun
and therenpon he brings his Suit, *&c.*

Here you have an action of Covenant brought
making further assurance; wherein you see
laying of the breach, and what the further assura
is, and indeed the whole difficulty of an action
Covenant, lies in the laying well the breach.

To this the Defendant pleads as followes.

And the aforesaid *I.* by *F. N* his Attorney co
and defends the force and injury when, *&c.* and sa
that the aforesaid *E* did not require him the
I. to seal, and as his Deed to deliver to the a
said *E.* the aforesaid writing of release, for fur
assurance of the aforesaid close with the appurte
ces, to the aforesaid *E.* to be made, as the afore
E. by his Declaration aforesaid above hath suppos
and of this he puts himselfe upon the country, and
aforesaid *E.* in like manner, therefore comman
given to the Sheriff, that he cause to come here
the morrow after the holy Trinity, twelve, *&c.*
whom, *&c.* and who neither, *&c.* to recog
&c. Because as well, *&c.*

Observe by this issue you see ioyned, that w
the Defendant takes issue, you say, (and of this
puts himselfe upon the country) and where the p

f takes the iſſue, you ſay, (and this he prayes may inquired of by the Country.)

In this action you recover Damages aſſeſſed by the ry for what you are damnified, by the breach of ovenant and coſts of ſuit.

Note that an Adminiſtrator, may have an action Covenant, as well as an Executor, and the Writ couenant ought to be brought in the county where e Deed is made; but if it be brought in another ounty, then where the Deed was made, the party efendant ſhall not have a Plea in bar to the Writ, leſſe that the Deed bare date in another Coun-

A Writ of Covenant alſo lies againſt pleadges, who come ſureties that another man ſhall perform a venant.

The aſſignee of the Leſſee ſhall maintain an acti- of covenant againſt the Leſſor, although he be t ſpecified in the ſaid Deed of covenant to be an ſignee.

HAving given you before, an iſſue joyned in an action of covenant, you are (in caſe you pro- d to trial) to make out your *Venire facias* as in others h this difference, onely that you ſay, (of a Plea covenant broken) and then your *Habeas Corpus*, d the reſt of your proceedings in order to triall, as ore in other actions.

But if after your Imparlance and rule being out, Defendant plead not, you muſt take your Judg- nt by default, which is to be ſigned by the *Pro ho- ary*, and then you are to have your Writs of In- ry which be awarded upon your Judgment roll, ſigned by the *Prothonotary*

There may be one or more breaches aſſigned, as caſe may require.

But in an action of Debt upon Bond for perfor-mance of Covenants, he can assigne but one.

Now becauſe within the title of that covenant fo all fall Writs of Covenant, it will not be amiſ to inſert here the forme of ſuing out a fine.

And firſt, How to acknowledge a fine at the Barre in Court.

IN the firſt place you are to take notice, that it i in the parties Election, whether they will acknow-ledge a Fine in open Court or before the Lord chei Juſtice of the common Pleas, at his Chamber o elſewhere out of the Court, as before ſome judg of the ſame Court, or before the juſtices of Aſſize i the Country, when they go *Circuit*, or before Com-miſſioners in the Country, by vertue of a ſpecia *Dedimus poteſtatem*, to give them authority to tak the knowledge thereof, none of all thoſe having th Lord cheiſe juſtice having power to take without *De-dimus, &c.*

If the acknowledgment be to be made in open cou you muſt have your Writ of Covenant made by th Curſiter, and there compounded it at the office o Alienation where it muſt be likewiſe indorſed an entred, and ſo fitted for the Seal, to which muſt b annexed your *Precipe*, and concord in Parchmen which you muſt deliver to ſome one of the Serjeant at Bar to draw it for you, and then you pay him three ſhillings four pence, the other Fees payable in Cour are certain and are not great; for by the acknow-ledgment in Court, the Client ſaves divers Fee and charges, which otherwiſe the Caption would coſt.

The

The Caption being paſt, you proceed with your *Precipe*, and Concord, and Writ of Covenant, through the alienation Office, Kings Silver, *Cuſtos Brevium*, and Chirographer, as hereafter is ſhewed in other acknowledegments

How to acknowledge a Fine before the Lord chiefe Juſtice.

IF you would acknowledge your Fine before the Lord cheiſe Juſtice of the Common pleas, out of Court, firſt draw your *Precipe* and concord in a ſheet of paper, and then bring the parties that muſt acknowledge the fine to my Lords chamber, and deliver your *Precipe* to my Lords Clarke of the Fines, who will read it to them in preſence of my Lord, and their hands being firſt ſet to it, he acknowledgeth it before my Lord, and he putteth his hand to it.

The fee of my Lord cheiſe Juſtice is, 9*s* - 8*d*. which being payed by you or your Client to my Lords Clarke, after the acknowledgement, the Clarke will afterwards ingroſſe the *Precipe* and concord in Parchment, and get my Lords hand to that which you muſt fetch from him, & give him his fee for the ingroſſing thereof, which is, that done, you muſt carry it to the Curſitor of the ſhire where the Land lies and leave it with him to make a Writ of Covenant by when the Writ is made, before you paſſe it under, ſeal, you carry it to the alienation office, where you are to pay a fine for licence or leave to alien, and there it is you muſt make your Compoſition, which is ſet by the Commiſſioners ſitting for that purpoſe, and that you may do it with the leſſe charge to your Client, you muſt informe your ſelfe of the value of the

land by year, and in case there have been a forme fine, if you have it not to know the rearm when it w and in case you inform the value, there is one fi purposely with the Comissioners to take it, wh was formerly a Doctor, you must by Entreaty, pe swasion, or otherwise draw the fine to be set at as lo a rate as possibly you may,

The value being set down by one of the Com missioners, if it exceed forty shillings, (for else ther is nothing to be paid) you must go to the Receive in the same office, and pay the fine so assessed whic is the Kings silver, for the Kings license, which l cense the Clark of the Kings silver entereth, as hereafter shewed, when the money is payd, the Rece ver will set his hand to the back of the VVrit, the give it to the Doctor to sign, who hath fote pen as I take it for his hand, then get the hands of th two Comissioners to the back of the writ, whic done, you must carry it to the three Clarks sitting t be indorsed and entred.

This being done you bring back your VVrit t the Cursitor and he will get it sealed, and then yo pay him the Fee of two shillings and six pence, the having broke it open you are to returne it as follow

Towards the upper end of the VVrit thus, } *John Doe.* Pledges of prose cuting *Richard Ro*

Towards the middle of the VVrit thus, } *John Dem.* *Richard Fem.*

And at the lower end of the VVrit the Sheri Name.

Th

This is now by a late erected Office done by an Officer who takes for the doing of it, and making an entry of it, 1 s. 6 d.

Note, you are to file a warrant of Attorney with the Clark of the warrants where your Writ of Covenant must be signed, which Warrant is as follows (the Shire in the Margin) *G. W. puts in his place T. to prosecute a Writ of Covenant against T. H. of Lands and Tenements in A. and C.*

That done, file your VVrit of Covenant and your Concord which you had from the Lords Clark together, and carry them to the *Custos brevium* his Office in *Lincolns Inne*, to the Clarke who dealeth for that Shire, and leave them with him to enter in his Book and to indorse the VVrit, when he hath done, fetch them from him, and pay him for the same, 3 s. 8 d.

Then take them and carry them to the Kings-silver Office to enter the Kings-silver which is the Fine for the value which you payd to the Receiver in the Alienation Office.

The forme of his entry you may see in the Rolls the King-silver Office, amongst the Plea Rolls of any Term in the Treasury at *Westminster*; his Fee is for entring of it, 6 d. which when he hath done, you must fetch it away and deliver it to the Secondary in the Chirographers Office who takes it forth in his book, and hath for his Fee 5 s. 8 d. if it be in the Term, but if it be not in the Term, then you must give him twelve pence more which he will have for allowing the Proclamation in the same Term: That done, you must in the same Office deliver it to the Clark of the Office, who is appointed to write for that Shire wherein the Land lyes to ingrosse, he hath for the ingrossing of it, 2 s. 6 d. if small, but if great, 3 s. 6 d. or more in case it be exemplified.

When

When your Fines are Ingrossed, which are by w
of Indentures, get one part from him, and delive
your Client to keep.

In making up your Clients Bill, you alwaies t
for your owne Fee, as allowed for your paines,
shillings eight pence,

How to acknowledg a Fine before a Judg of Court, by Dedimus potestatem.

YOU shall proceed in taking the acknowled
ment, and in passing the VVrit of Coven
thorow the Alienation Office, in like manner a
before shewed, which being done, and deliver
your VVrit back to the Cursitor, you must bespe
a *Dedimus potestatem*, which the Cursitor must m
and when you have your VVrit of Covenant and
dimus potestatem under seale, you must deliver
Dedimus to the Judges Clark of the Fines, and
will Ingrosse the *precipe* and *Concord* as before is sh
ed, and return the *Dedimus*, and get the Jud
hand to it; which *dedimus* so returned, Conc
and VVrit of Covenant you must annex toget
and passe them through the *Custos brevium*, Clar
the VVaranty, Clark of the kings Silver, Mr. J
his Office of Inrolments as its termed, and the C
rographers Office in like manner, as is before sh
ed: The course of Proceeding and Fees being all o
more then this, that you pay to the Cursitor
your *Dedimus potestatem*, 9s 2d.

How to ſue forth a Fine to be acknowledged before Commiſſioners in the Countrey, by eſpeciall Dedimus Poteſtatem.

WHere in regard of the Cognizors debility of Body, or remoteneſs from *London* or *Weſtminſter*, or other occaſion, you are to ſue out a Fine, and paſſe it by ſpeciall *Dedimus*, inabling Commiſſioners in the Country to take the acknowledgment; you are to proceed as followes.

FIrſt draw your *precipe* in a Sheet of Paper, as a Note for the Curſitor to draw the *Dedimus* by, then ingroſſe your *Precipe* and *Concord* in a faire peice of Parchment, and go therewith to the Curſitor of the Shire where your Land lies, and upon your *Precipe* in paper inſert your Commiſſioners names, which muſt be four in number, whereof one at leaſt muſt be a Knight, and get him to make your *Dedimus Poteſtatem*, for which you muſt pay him and paying of him (for he takes for them all) you pay a Fine, and for a Judges hand, and for the Maſter of the Rolls his hand, which hands muſt be had before it be ſealed, and then having it under Seale, deliver it ſo, and the Concord before any two of the Commiſſioners named in the *Dedimus*, and your Cognizors being preſent, let them take the *Caption* as is before ſhewed: Which being done, they muſt return the Writ of *Dedimus*, and their Execution thereof in manner and form following on the back of the Writ.

The Execution of this VVrit appears in a certain *Schedule*

Schedule to the Writ annexed.

And they muſt write the day of the *Caption* of Cognizance, underneath the Concord as follow (Taken and acknowledged at *C.* in the County of the twelfth day of *Auguſt* 1650)

Underneath the which the Commiſſioners are Subſcribe their names

Having your *Dedimus poteſtatem* thus returned, y muſt file your *Dedimus* and *Concord* together, a carry them to the Curſitor for the making of y Writ of Covenant, which having had and compou ded, your Proceed is as in all other Fines throu the ſeverall Offices.

NOte that upon every Fine paſt, where a Fi is paid, there is within foure or five Term a poſt Fine, that comes in charg to the Sheriff levy in the County where the Land lyeth; a that Fine is as much and halfe as much, as was pa before in the Alienation Office.

How to ſue forth a licenſe of Alienation of Lands holden in Capite.

IF you levy a Fine of Lands holden in *Capite* the Kings, you muſt be driven to ſue forth you licenſe of Alienation, for if you ſhould enter in the Land without a licenſe the King would haue Writ of Intruſion againſt you and receive all th main Profits untill you have ſued out a Pardon, whic is both troubleſome and chargeable: The Fine where of beſides the main Profits between the Intruſio and the Pardon, and the other charges, is above years value clearly, according to ſuch compoſitio

affidavit of the under value, as is ſaid before the ner Compoſitions of the Alienation Office, unleſſe Commiſſioners inquire, will more favourably mpound for the mean Profits, as in ſome caſes on reaſonable cauſe ſhewed they uſe to doe.

And your licence af Alienation is to be ſued in this nner, firſt, You muſt get the Clark of the Alie-tions, to make you a *Docquet* in paper, which you uſt carry to the Alienation Office, and there com-und for the value of the Land, which muſt be al-by compoſition or *Affidavit*, as is ſhewed before, The value being ſet down underneath your *Doc-et*, you muſt pay a third part of the value ſo aſſeſſed way of Fine for your licenſe, which you muſt like-ſe pay there in the ſame Office, and you muſt ve the Receiver over and above what you pay, pence.

Then you muſt there get the Doctors hand to your *ocquet*, for which you muſt give him, 2 *s.* and you uſt then get the Commiſſioners in the ſame Office, ſet there hands to the *Docquet* then deliver it to e Regiſter, there to enter, for which you muſt give m 6*d.* And after it is entred, then carry it to the lark of the Alienation again and he will get the ord Chanſellor or Lord Keepers hand to it, and will terwards ingroſſe youur licenſe of Alienation, and aſſe it under the great Scale for you. The Charges e as followeth.

The Charge of acknowledging a Fine before the ord chief Juſtice, and a licenſe of Alienation upon he ſame.

	l.	*s.*	*d*
For drawing the Concord,	0	3	4
For my Lord chife Juſtices Fee for acknowledge-ment.	0	9	8
To his Clark for ingroſſing the Con[illegible]	0	1	6

For

For the Writ of Covenant.	0-2.
For the return.	0-2.
For the *Post diem* thereof.	0-0.
For the Fine,	0-0.
To the Receiver for marking the Writ of Covenant.	0-0.
For the entry and Indorſement	0-1.
For the Doctors hand.	0-0.
For the Warrant of Attorney and filing it.	0-0.
To the *Cuſtos brevium.*	0-3.
To the Clark of the Kings Silver.	0-1.
To the Chirographer.	0-6.
For ingroſſing the Fine	0-3.
For the Attorneys Fee,	0-6.

Charges of the fine acknowledged at Bar.

	s.
FOR drawing the *Precipe* and Concord	3-4
For the Writ of covenant	2-6
For return of the ſame	2-0
For the filing thereof	10
To the Serjeant at Bar	3-4
To the Prothonotary	6
To the Secondary	6
To the Crier, Tipſtaves, and court keeper	1-6
For the Fine	
To the Receiver	6
For entry and indorſement	1-6
For the Doctors hand	4
For the Warrant of Attorney and filing of it	8.
To the *Cuſtos brevium.*	3-8
To the clark of the Kings ſilver	1-4

To

To the Chirographer 6-8.
For ingroſſing the indentures of the fine 3-0.
For the Fee 6-8.

Charges of a Fine acknowledged by Dedimus poteſtatem, before a Judg, and exemplified.

FOR drawing the *Precipe* and concord 3-4
To the Judge for his fee 9-8
To the Clark for the return of the *Dedimus*, and ingroſſing the Concord, 2-6.
For the Writ of *Dedimus poteſtatem*, 9-2.
For all other Fees, as in the next proceeding, for the ſeverall Offices
For the Exemplification, 2-8.
For the Exemplifying, 5-6.
For the Seale thereof, 2-2.

Charges of a Fine by ſpeciall Dedimus poteſtatem *taken before Commiſſioners.*

FOR drawing the *Precipe* and Concord. 0-3-4
For the ſpeciall *Dedimus poteſtatem*, 1-0-0
For the Returne, 0-3-0
For the reſt of the Fees they differ very little from what are payd upon Fines otherwiſe acknowledged

HAving ſpoken ſo largely of Fines, it now reſts we ſhould ſpeak ſomewhat of Recoveries, that relate

relate thereunto, for in many Cases where a R is had, if there be Remainders over, it is very ceſſary for the Purchasors ſecurity to have a Rec ry, to bar thoſe in Remainder.

We ſhall therefore begin to ſhew you how to forth a Recovery the Tenant and Vouchee co in perſon into Court.

When you would ſue forth a Recovery to bee ſered by the parties in open Court, you muſt thus:

Draw your *Precipe* for your Writ of entry, na ing the Demandants and the Tenants, the quan of Lands, and of what nature, how many Ac what Mannors Meſſuages, and in what place or ces they lye or extend.

Then take your *Precipe* and enter it upon the of Pleas or Remembrance of the *Prothonotary*, whoſe Office you enter and put the Voucher or V chers names in the Margen of the Remembrance it be a ſingle Voucher, then thus: The proper nant calls *Howſe* to warranty.

If a double Voucher, the proper Tenant calls L. Eſq; who calls *J. Howſe* (who is the comm Voucher and the laſt Voucher in all Recoveries) a trebble Voucher, then you muſt name another p ſon to be Vouched over.

Upon this Remembrance you muſt enter after y *Precipe*, the Returne and *Teſte* of your Writ of try, and how it is returned, and the Sherifs na but this you make perfect before you examine y Recovery with the prothonotary

Thoſe remembrances are alwayes brought to t Hall in the Term time at the firſt ſitting of the co ſo that when you would draw your Recovery at B your fitteſt time will be in a morning when the Jud firſt ſit down, before they enter upon buſineſſe.

Hari

Having your clients in readineſſe at the Bar, the
ants and Vouchers, and the Remembrance in
r hand, call them up between the Serjeants, and
n deliver the Remembrance, and ſhew him your
cipe into one of the Serjants hands, who will
which is the Tenant, and cauſe him to ſtand up,
llo the Vouchers, to the intent that they may be
wed to the court, then the Judges will aske, who
wes the parties, which you or ſome other muſt
wer, you know them to be ſuch parties, or elſe
ht others come either in men or womens names
ſuffer a Recovery of their Lands, to the Loſſe
heir Lands, as hath been heretofore ſeen; where
husband brought in another woman a ſtranger,
ing, ſhe was his wife, and ſuffered a Recovery of
wives lands to cu t off her eſtate withont her con-
t.

After the Tenant or Tenants with the Vouchers,
e their appearance recorded, then muſt you give
every Serjant that ſpeakes, (and one there is
each perſon perſonated, whether Demandant,
nant, or Voucher or Vouchers) two ſhilling and
pence, which done, and the reſt of the fees payd in
urt, which follow after amongſt others,

Then get the Curſitor to make your Writ of
ry by the *Precipe*, and having your writ of Entry
ealed, you muſt proceed therewith in the aliena-
n Office and other Offices, in all things as was
wed in a Writ of covenant, for the Fees and the
e are all one, only you muſt have the Attorney
neralls hand to the Back of your Writ of Entry
ch you have not to the Writ of covenant, for
ch you pay ten ſhillings, formerly but eight ſhil-
gs, and is for that you ſhould enter into that, the
l is not holden in *Capite*, but when they did
r bond, they did pay but ſix pence; and alſo where

the Land is holden, and you ſue forth licenſe Alienation, you ſhould pay nothing.

Then take your Writ and get it ſealed, and the open it and returne it, as you do your VVrit of C venant.

Then deliver your VVrit to one of the Clarks the Prothonotaries Office, who entreth for you, a he will enter and exemplifie your Recovery for yo and make your writ of Seizin, and return that an examine the Recovery with the Remembrance, wri of Entry and Seizin, and the Roll your Recovery entred on with the Prothonotary, who muſt ſign yo Exemplification, which being carfully examine and ſigned, you muſt get ſealed, and then deliv it to your Clyent: And you muſt be very carefu to ſee both your writ of Entry and ſeizin filed wi the *Cuſtos brevium*, for that is the warranty for yo Procedings had.

Note your writ of Seizin may be made retur able *Indilate*, or at a day certain, or of the Term fo lowing, all which your own further experience an practiſe will ſhew.

How to ſue forth a recovery by Dedimu Poteſtatem, *and Warrant of A torney.*

IF either the Tenant or Vouchers cannot come in the Court in perſon, you muſt paſſe it by warra of Attorney, which warrant of Attorney may be take by any of the Judges of either Bench, Barons of th Exchequer, or Serieants at law in their circuits with out *Dedimus poteſtatem*, or by Commiſſioners in th Country

Country, where you muſt proceed as in the Fine by *Dedimus poteſtatem.*

When you acknowledge your warrant before a Judg you muſt draw up your warrant as before in Parchment, and go with the Partyes before a Judge and acknowledge them, and he will under-writ the Day of the Caption, anb ſubſcribe his name, then get your Writ of entry made and paſſed through the Alienation office, which done, ſeal it, and deliver it to your Prothonotaries Clark, and he will enter it and will award the Writ of Summons, which will come in nine Returnes after the *Teſte* of the VVrit of Entry incluſive, and he will make a Copy of the Declaration he entereth in parchment, which together with the VVrit of Summons, and the warrant of Attorney, he will examine with the Prothonotary by the VVrit of entry and the roll

Then will he returne a VVrit of Entry, and give you ſixt together with the VVrit of Summons, warrant of Attorney, and Copy of the Declaration.

The VVrit of Entry you muſt file, the VVrit of Summons you muſt Seale and keep them ſo ſixt together ſafely till the VVrit of Summons be returnable; at which time you muſt bring the ſame into Court, and deliver it to one of the Serjeants, who will call it at the Barr, as the manner is, and you muſt pay the Fees in Court, which done you muſt take it from the Serjeant and give it to the Prothonotary, who will marke it thus (*A Barram*) and give it you againe, which you muſt deliver to your Clark in the Prothonotaries Office, who will Exemplifie and make your Recovery perfect and fitted for the Seale.

NOte that although the Tenant be by warrant of Attorney, if either the Recovery be a ſingle

Voucher, or the Vouchers come in perſon, it needeth no Summons, and ſo may be a perfect Recovery of one term.

Note alſo, where you will take your warrant by *Dedimus poteſtatem* before ſpeciall Commiſſioners, you muſt carry a Note of your *precipe*, and of your Commiſſioners names to the Cuſtitor, and get him to make your *Dedimus*, and proceed in that as is ſhewed you in caſe of a Fine, as to the Caption: And when your warrants are acknowledged, get them certified, & and then by the helpe of your Prothonotaries Clark, you may ſoon proceed to perfect your Recovery, either to Summons or *Alias* Summons, or ſo as your cauſe ſhall require.

It behoveth the Attorney to be very carfull of the true returning and filing of his Writs, and the examining and filing of his Warrants, and other proceedings, for fear of committing Errour: And to that purpoſe by the Statute of 23. *Eliz.* it hath been uſed, eſpecially in weighty matters, to exemplifie the Writs, Returnes, and Warrants of Attorney, for feare of being imbezzeled, whereby the Recoveries might be overthrown.

If you are to ſearch for any Recovery of an old Tearme, you muſt ſearch in the Office of the Clark of the Warrants of Attorney, where you ſhall ſooneſt finde it of any place, by reaſon all the Prothonotaries bring in their Plea Rolls, on which the Recoveries are entred to the Clark of the Warrants to take them out into a Book.

It hath been the conſtant practice formerly, in caſe the Land were holden in *Captie*, to ſue forth a licenſe af Alienation, as you doe in the caſe of a Fine, and that before your Writ of Entry, for elſe you may be inforced to ſue forth a pardon afterward, which was a very great miſchiefe.

Charg

rges

Cha of a Recovery with two Vouchers in perſon at the Barr.

	s - d
FOR drawing your *Precipe*,	2 - 6
For taking it into the Remembrance,	1 - 0
For your Writ of Entry,	2 - 6
For the Fine of it.	
To the Receiver,	0 - 6
For the Doctors hand, entring, and endorſing,	1 - 6
For drawing it at Bar, and four Serjeants,	13 - 4
To the Criers,	1 - 0
To the Box,	1 - 0
To the Warden of the Fleet,	0 - 6
For the common Vouchee,	0 - 4
For the Attorney Generals hand to the VVrit,	10 - 6
For making the Remembrance when the Recovery is drawn at the Barr,	2 - 0
For the return of the VVrit of Entry,	2 - 0
For the *Poſt diem* of the Writ of Entry,	0 - 4
For return of the VVrit of Seiſin,	2 - 0
To the Prothonotary for the Entry of the Recovery,	14 - 6
To the Clark for exemplifying of it, and making the writ of Seiſin.	7 - 6
For ſealing the Exemplification, and VVrit of Seiſin,	2 - 9
For filing the writs of Entry and Seiſin,	2 - 0
For the Fee of Demandant, Tenant, and Vouchee in the Recovery,	10 - 0

Charges of a Recovery by Summons upon a Warrant of Attorney.

	s.	d.
FOR drawing your Recovery, *Precipe* and the Warrant of Attorney,	3	4
For entry of the Summons;	6	6
For making the VVrit of Summons, and the Seale,	2	7
To the Clark for drawing the Summons, and the entry in parchment,	2	6
For filing every VVarrant of Attorney,	0	8
For return of the VVrit of Summons,	2	0
For the filing of it.	1	0

Note that every single Voucher hath three Serjeants, a double Voucher foure Serjeants, and a trebble Voucher hath five Serjeants, and so further.

The Prothonotarie hath as you see before for his entry for every Summons.	6	6
For every single Voucher,	10	6
For every double Voucher,	14	6
For a trebble Voucher,	18	6
For every *Dedimus* and *Mittimus*,	4	0

The Charges of a Recovery under the Great Seale of England.

	l.	s.	d.
FOR the *Certiorare*,	0	13	4
For the allowance thereof,	1	09	6

To

To the Clarke for his paines, 0-06-8
For the Exemplification for every Skyn, 1-06-8
For the Seale, 1-00-6

Come wee now to the Action called Ejectione Firme.

THis Action is the moſt generall Action now in uſe, for tryall of a Title, and comes in place of many reall Actions, which where both very tedious, difficult and chargeable. This lyes, where a man makes a Leaſe to another of Lands, Houſes, *&c.* And ſeales and delivers it upon the Premiſſes, and leaves the Leſſee in poſſeſſion, and afterwards the Leſſee is outed by the Entry of a Stranger,; here in this caſe the Leſſee ſhall bring his *Ejectione Firme.*

And in bringing this Action, he muſt have recourſe to his Leaſe, both for the thing demiſed, and the Term, and the date of the Demiſe, and the place preciſely where the Land lyes, but thoſe only are to be mentioned in the Court, bnt not in the Writ.

You muſt be ſure your Originall beare Teſte, after the entry of the Ejector. and after

In this Action is recovered the Poſſeſſion of the Land or Houſe demiſed, and that by an Execution of *Habere facias Poſſeſſionem*, which is awarded upon the Judgment Roll, and alſo Damages.

The Proceſſe in it are Originall, *Caſias alias, &c.*

The Originall runs thus.

THE Keepers of the Liberty, *&c.* Greeting, *&c.* Wherefore by Force and Armes two Meſſuages,

one Garden, eight Acres of Land, two Acres o Meadow, and three Acres of Paſture, with the Ap purtenances in *H.* which *R. C.* to the aforeſaid *T. P* did demiſe for a Tearm which is not yet paſt, did en ter and him the ſaid *T. P.* from his Farm aforeſaid h did eject, and other harmes to him he did, to th great Damage of him the ſaid *T. P.* and againſt th publick peace, *&c.*

This is the form of your Originall, and muſt b made thus by the Curſitor of the Shire, where th Land lyeth,

Note that although in your Leaſe you many time name ſéverall Cloſes, either of Land, Meadow Paſture, by their particular names, yet in your Wri you muſt name the quantity of Acres of each, an how many Houſes, Cottages, Mills, *&c.*

After your Originall is ſued out, and a *Nichil* re turned thereupon, you proceed to take out a *Capia* and ſo arreſt the Ejector, but if you connot arre upon the *Capias*, you may as in other Actions pro ceed to the Outlawry.

But the party againſt whom you bring your Act on, either appearing after Arreſt, or voluntarily you muſt prepare your Declaration.

The Declaration goeth thus.

Bedford. ſſ.

R. G. lately of *H.* in the County aforeſaid Yeo man, was attached to anſwer *T. P.* of Plea, where fore by force and Armes, two Meſſuages, one Gar den, eight Acres of Land, two Acres of Meadow, and three Acres of Paſture, with the Appurtenances in *H.* which *R. C.* to the aforeſaid *T. P.* did demiſe for a Tearm which is not yet paſt, did enter, and him the ſaid *T. P.* from his Farm aforeſaid he did eject, and other harmes to him he did, to the great Damage of him the ſaid *T. P.* and againſt the publick peace,

&c.

c. And whereupon the ſaid *T. P.* by *F. N.* his Attorney complaines, that whereas the aforeſaid *R. C.* ſuch a day, and yeare, and place, naming the date the Demiſe) did demiſe to him the ſaid *T. P.* the enements aforeſaid with the Appurtenances, to ve and to occupy to him and his Aſſignes, from ſuch a day then laſt paſt) unto the end and Tearm three yeares then next following, and fully to be mplear and ended: by vertue of which Demiſe, e aforeſaid *T. P.* into the Tenements aforeſaid with e Appurtenances did enter, and was thereof poſſed, and the ſaid *T, P.* ſo being thereof poſſeſſed, e aforeſaid *R. G,* afterwards, to wit (ſuch a day d yeare aforeſaid) by Force and Armes, *&c.* Inthe Tenements aforeſaid with the Appurtenances, ich the aforeſaid *R. C.* to him the ſaid *T. P.* in m aforeſaid did demiſe, for the Tearm aforeſaid ich is not yet paſt, did enter, and him from his rm aforeſaid did eiect, and other harmes, *&c.* he great Damage, *&c.* and againſt the publick ace, *&c.* Whereupon he ſaith, that he is damni- and hath Damage to the value of forty Pounds, d thereupon he brings his Suit, *&c.*

To this the moſt generall plea is not guilty, nor here indeed any other plea in uſe, ſometimes the fendant confeſſeth the action, and here you ſee owing a Plea if not guilty and a confeſſion both to action.

And the aforeſaid *R.* by *T. L.* his Attorney, comes defends the force and injury when, *&c.* And as he whole Treſpaſſe and Ejectment aforeſaid, above poſed to be done, beſides the Treſpaſſe and Ejectnt in three acres of Land of the Tenements aforewith the appurtenances, he the ſaid *R.* ſayes, he is no wiſe thereof guilty as the aforeſaid *T. P.* ve againſt him declareth, and of this he puts himſelfe

to purſue his Action, ſhall have the Diſtreſſe de
ered to him again: But there be divers things tha
not diſtrainable, *Viz.* another mans Garm
in the houſe of a Taylor, a Strangers Cloath in
houſe of a Fuller, Shearman, or Weaver, for t
they be common Artificers, and that the comm
preſumption is, that ſuch things belong not to
Artificers in their owne right, but to other perſ
which put them there to be wrought: The Leſſor c
not diſtrain fats fixt by his Leſſee for a dying P
although the Leſſee may remove them during
Tearm.

The Leſſor cannot diſtrain Glaſſe fixt by the *Le*
for his Rent.

The Lord cannot diſtrain Shocks of Corn for
Rent, but doing Damage he may, Sheaves of C
in a Cart may be diſtrained, Victuall is not diſtr
able.

A Diſtreſſe ought alwayes to be made of
things, whereof the Shreiff may make Replevin,
deliver again in as good caſe, as they where at
time of the taking.

A man may diſtrain for Homage of his Tenant,
Fealty and Eſcuage and other Services.

He may diſtrain alſo for Fines and Amerciam
which be aſſeſſed in a Court-Leet, but not in a C
Baron.

He may likewiſe diſtraine for Damage-Fes
that is to ſay, When he findeth the Beaſts or G
of any other, doing him wrong, by eating his G
or Corn, or trampling them down, or for inc
bring his Ground.

Note a man may not diſtrain for any Rent or t
due for any Land, but upon the ſame Land th
charged therewith.

But in caſe when a man comes to diſtrain, the
ſee

ing his purpoſe, chaſeth his Beaſts or Cattel away, beareth his Goods out, to the intent they ſhall not taken for a Diſtreſſe upon the Ground; in ſuch ſe I may well purſue, and if I take it preſently in high-way or in another mans Ground, the takeing lawfull as well there as upon the Land charged, to omſoever the property of the Goods be.

And for Fines and Amerciaments, which be aſſeſſed a Leet, one may alwayes take the Goods of him t is ſo amerced, within whoſe Ground ſo ever y be within the Juriſdiction of the Court.

Where one is amerced in a Leet, and another es Leather from him, and makes thereof Bootes hooes, whereby there ſemes to be an altering of the perty, in this Caſe, thoſe Boots or ſhooes being hin the Precinct of the Leet may be diſtrained for amerciament.

Note, when one hath taken a Diſtreſſe, it behoo-h to bring it to the common pound, or elſe he y keep it in an open place, provided that he give ice to the party, who was owner of it, of his ſo ta-g of it, and the place where it is, that he, if the ſtreſſe be a quick beaſt, may give it food, and then he beaſt or beaſts, dy for default of food, he that diſtrained, will receive the loſſe, for the party di-ining, may take anorher diſtreſſe for the ſame t or duty.

But if he carry the diſtreſſe to a Hold, or out of County, ſo that the Sheriff may not make deli-ance upon the Replevin, then the party upon the rifs returne of the Replevin may have a Writ *vithernam* directed to the Sheriff, that he take nany of his beaſts, or as much goods of the other is keeping till he hath made deliverance of the diſtreſſe: And alſo if the Beaſts or goods be veyed to a Fort or Caſtle the Sheriff may take

with

with him the *Posse Commitatus*, that is the power the County, and beat downe the Castle, as appea by the Statute of *Westminster* the first, Chapter t seventeenth.

There is Distresse finite and infinite.

Distresse finite, is limited by Law, how often shall be made to bring the party to a tryall of t Action, as once or twice.

Distresse Infinite, is within limitation untill t party come, as against a Jury that refuseth to a peare upon Certificat of Assize, the processe ar *Venire facias*, *Habeas corpora*, and Distresse infinite.

It is divided also into Grand Distresse, and an dinary Distresse.

A Grand Distresse is that which is made of all t Goods and Chattells which the party hath with the County, and seemeth sometimes to be all o with Distresse infinite

If a man proffer sufficient amends before the D stresse made, for the wrong done by a mans Catt or otherwise, he cannot Distrain and Avow.

Note that it is not lawfull for any common per so make Distresses out of their Fee, nor in the Ki high way, nor in the common Street, but the Ki might and so might any who are substituted as Ministers, and have especiall Authority deri from him.

Thus much for Distresses in generall, we co now to the Replevying of the Distresse tak

THis Replevin (as we touched before in Distr is a Writ that lyeth where any man distrain another for Rent or other thing, then the party strain

rained ſhall have this writ to the ſheriff to deli-
er to him the Diſtreſſe, and ſhall finde ſurety (as
e ſayd before) to purſue his Action, and if he pur-
e it not, or if it be found or adiudged againſt him,
en he that took the Diſtreſſe ſhall have againe the
ſtreſſe, and, that is called the returne of the Beaſts.
other things, and he ſhall have in ſuch Caſes, a
rit that is called a *Returno Habendo.*

Alſo if it be in any Franchiſe or Bãiliwick, the
rty ſhall have a Replevin of the Sheriſt, directed to
e Bailiff of the ſame franchiſe, for to deliver them a-
ine, and he ſhall find ſurety to purſue his action at
e next County Court, and this Replevin may be
moved out of the country unto the common Pleas,
a writ of *Recordare.*

Note, that a man may have a writ of *Homine replegiando*, which lies, where a man is in priſon, and not by
eſpeciall commandement of the King, nor of his
tices, nor for the Death of a man, nor for the Kings
reſt, nor for ſuch cauſe that is not repleviable;
n he ſhall have this writ directed to the Sheriffe,
t he cauſe him to be replevied.

This writ is a Iuſtices and not returnable, and if
Sherif do it not, then there ſhall go forth another
rit (*Sicut alias*) and afterwards another VVrit,
cut plures vel cauſam nobis ſignifices) which ſhall
eturnable, and if the Sheriff yet make no Re-
vin, then there ſhall go forth an Attachment a-
nſt the Sheriff, directed to the Coroners to at-
h the Sheriff, and to bring him before the Juſtices
certain day, and furthermore that they make
cution of the firſt writ.

If a man take living Cattell, and more then one
ſt, then the VVrit of Replevin runs thus.

The

The Writ of Replevin.

THe Keepers, *&c.* We command thee that iuſtly and without delay, thou cauſeſt to be replevied unto *B.* his Cattell, which *C.* took and iniuſtly detaines, as it is ſaid, and afterwards to him then thereupon, iuſtly cauſe to be brought back, leaſt that we any more thereupon, heare a complaint for want of Juſtice, *&c.*

If it be but one ſingle Beaſt that is taken, then the Writ ſhall be.

The Keepers *&c.* We command thee, *&c.* that thou cauſeſt to be replevied unto *B* his Horſe, Heifer, or Bull, *&c.*

If it be of any dead Chattell, the Writ ſhall go thus.

The Keepers, *&c.* We command thee, *&c.* that thou cauſeſt to be replevied unto *B.* his Goods and Chattels.

In his Declaration it behoveth him, to declare of divers things, naming them.

But if he take but one thing that is a dead Chattell, then the Writ ſhall be thus.

The Keepers, *&c.* We command thee, *&c.* that thou cauſeſt to be replevied unto *B.* a certain Net, a certain Iron of his Mill, *&c.*

NOte that if the Sheriff return upon the Replevin, the *Alias or Plures* (where the Replevy is to be made within a Liberty or Franchiſe) that he hath commanded the Bailiff of the Franchiſe, who hath given him no anſwer, or that the Bailiff will not make deliverance, that then the Plaintiff ſhall have a *Non omittas* directed to the Sheriff, commanding him to enter into the Franchiſe, and make the Return, and if the Sheriff do it not, the Plaintiff ſhall

all have an *Alias non omittas* directed unto the She-
iff, and afterwards a *Plures non omittas*, &c.

But this return, that he hath commanded the Bai-
iff of the liberty, *&c.* who gave me no anſwer, *&c.*
r the other return, that the Bailiff will make no de-
verance, are no good returns, for by the ſtatute of
eſtminſter 1. *Chapter the* 17. in the end of the ſame
tute appears that the Sherif upon ſuch a return
ade to him by the Bailiff ought preſently to enter
to the franchiſe or liberty, and make deliverance of
e thing taken.

And if the Sheriff upon the *Plures*, return, that the
oreſaid *B.* the cattell of the aforeſaid A. hath taken
d them hath driven out of the County into the
unty of *F.* by which he cannot replevy them un-
him, or if the Sherif returne that he hath comman-
d the Bailiff of the Franchiſe of *D.* who hath re-
rne of VVrits, *&c.* who hath anſwered him, that the
ttell are Eſſoyned into divers liberties, that he
not have the view of them, whereby to make de-
erance.

And if the Sheriff himſelf make return, that he can-
have view of the cattel whereby to make deliverance
if the Sherif return, that after the taking of them,
. the Defendent hath eſſoyned his Beaſts out of
Bailiwick, by which he cannot make deliverance,
if the Sherif return, that the Defendant hath
yned his beaſts into places unknown, by which he
not come to have a view of the Beaſts, whereby
ake deliverance, or if the Sherif return that he
h commanded the Bailiff of the Franchiſe, *&c.*
ho hath anſwered him, that the Defendant hath
ounded the beaſts within the Rectory of the
urch of *C.* by which he cannot make deliverance
n thoſe returnes made by the Sherif, the Plaintiff
have a Writ of *Withernam* to take as many of the

beasts of the Defendant, and it shall be directed to th
Sherif, and the Writ shall be thus,

The Writ of Withernam.

THE Keepers, *&c.* Whereas we have many tim
commanded thee justly, *&c.* To *A.* his Catte
which *B.* took, *&c.* and detaineth, as its said, Th
shouldst replevy or signifie the cause to us, where
our commandement to thee many times thereupon
rected, thou couldest not, nor wouldest not execu
And thou hast signified unto us, that after the afo
said *B.* took the Cattell of the aforesaid *A.* he dr
them in your County, and from that County i
the County of *C.* by which you could not replevy th
to him the said *A.* we willing to stop the malice of h
the said *B.* in that behalfe, command thee, that
Cattell of the aforesaid *B.* within thy Bayliwick, t
take without delay in *Withernam*, and them thou de
untill, according to the custome of our Realm
England, thou canst replevy the aforesaid A. his C
tell, according to the Tenor of our aforesaid C
mand to thee formerly directed, *&c.*

Note in this Writ of *withernam*, that whatso
the Sherif return upon the *Plures*, it ought to be
ferred and rehearsed in the Writ of *withernam*,
before specified, and if the Sherif returne upon
Plures, that he hath commanded the Bailif of
Franchise, *&c.* who answereth him, that the C
re are essoyned, *&c.* then the Plaintiff shall ha
Writ of *withernam*, directed to the Sherife, and
Sherif shall command the Bailiff of the Franchi
serve the *withernam*, and if the Bailif do not Ex
tion, or give not any answer to the Sherif of the
cept directed to him, then the Plaintiff shall ha
Withernam directed to the Sherif, with a (*non om*
propter aliquem libertatem, &c. *Qui eam ingredi*
&

) and shall take in *withernam*, &c.

Note that the Sherif upon complaint made unto im of the taking of Cattell, may command his Bailif y word of mouth to make Replevin and this as well if the Sherif had made a precepe to his Bailiffe to ake a Replevin, for it may so fall out the Sherif nor it Bailif may not be able to write, or may want pen, nke, or paper.

If a man take Cattell damage feasant, that is, oing hurt, and offer sufficient amends before the attell be impounded, and the party refuseth it, &c. ow if he sue Replevin for the Cattell, he shall cover damages onely for the detaining of them; d not for the taking of them, for that was warrantle.

And if the Lord take the Beasts of his Tenant rongfully, and after the beasts return unto the Tent, yet the Tenant shall have a Replevin against e Lord for those beasts, and shall recover his damges for the wrongfull taking of them.

And if a man distrain in one County, and drive the ttell into another County, the party whose Cattell y were may sue a Replevin in either of the Coun, which he pleaseth, or in both.

And if the Cattell of a feme sole, that is, a woman married, be taken, and afterwards she take a Hus nd, the Husband soley may sue a Replevin.

Note in Replevin, if the Plaintiff declare that the fendant now hath and detaineth the Cattell, &c. d the Defendant appeares, and after makes default, e Plaintiff shall have judgement to recover all in nages, as well the valve of the Cattell, as damage the taking of them, and his costs.

this action of Replevin the processe are Sumons, Attachment, and Distresse, upon a *Ni-*

chil, proceſſe of Outlawry, and then the Origina
muſt come forth of the Chancery, except the Sher
who may make a Replevin, *Ex Officio*, (which ſha
be tried in the Sheriffs Court, called the County-cour
do make it, which is moſt uſuall, and then it may b
removed forth of the Sherifs Court, by a (*Recorda*
or forth of any Lords Court or Hundred Court, by
(*Accedas ad curiam*) upon either of which writs retur
able, either into the upper Bench or common Ben
if the Plaintif declare not againſt the avowant for t
king his Goods or Chattells which were taken befo
the Avowant is to ſue out a writ of *Returno Habe*
to be made by the Phillizer of the County, upon
Return of which Writ, if the Plaintif, that is, he wh
Cattell were taken declare not, there ſhall be a V
to inquire of Damages, &c.

And if the Sheriff upon the *Returno Habendo*,
return that the Cattell were Eſſoyned, &c. then
Capias in *Withernam* as was before ſaid, ſhall be awa
ed to take other Cattell; and if the Sheriff re
that he hath no Cattell, then a *Capias* againſt
Body, and thoſe Proceſſe are likewiſe made by
Phillizer of the County, &c. And the like P
ceſſe may be had in a Court Baron, in Repl
there.

Having ſhewed you the nature of this Action,
how and in what caſes it lyes, and the Proceſſes
are incident to it: We come now to the Declara
upon it:

Devon, ſs.

I. *N.* was ſummoned to anſwer *W. D.* of a P
wherefore he took the Cattell of him the ſai
and them unjuſtly detained againſt Sureties
Pledges, &c. And whereupon the ſame *W.* by
his Attorney complaines, that the aforeſaid *I*

uch a day and yeare) at *R.* in a certaine place there
lled *E.* he took the Cattell, that is to ſay, five Hey-
s and two Bullocks of him the ſaid *W.* and them
juſtly detained, againſt Sureties and Pledges, un-
, *&c.* Whereupon he ſaith, that he is damnfied and
h Damage to the value of twenty Pounds, and
reupon he brings his Suit, *&c.*

The Avowry or damage feſant.

Nd the aforeſeid *I.* by *R. F.* his Attorney, comes
and defends the Force and Injury when *&c.* And
he Bailiff of *I. E.* well acknowledgeth the taking
he ſaid Cattell, in the aforeſaid place in which,
and juſtly, *&c.* becauſe he ſaith, that the ſame
e in which the taking of the Cattell aforeſaid
ſuppoſed to be done, containeth, and the aforeſaid
e of the taking aforeſaid above ſuppoſed to be
e, did contain in it ſixteen Acres of Land with
Appurtenances, in *R.* aforeſaid, which ſaid ſix-
acres of Land with the Appurtenances are, and
aforeſaid time of taking aforeſaid above ſuppoſed
e done, were the ſole and free Tenement of the
I. E. And becauſe the Cattell aforeſaid, the
eſaid tin e wherin, *&c.* were in the aforeſaid
e in which, *&c.* feeding upon the Graſſe grow-
therein, and doing Damage there, the ſame *I.*
he Bailiff of the aforeſaid *I. E.* well acknowledg-
he taking of the aforeſaid Cattell, in the afore-
place in which, *&c.* and juſtly, *&c.* doing there
nage, *&c.*

A plea in Barre to the Avowry, by a Guardian in Socage.

AND the aforesaid *W.* saith, that the aforesa*I.* for the reason before alledged, ought not acknowledge the taking of the aforesaid Cattell, the aforesaid place in which, *&c.* as the Bailiffe the aforesaid *I. E.* to be just, because he saith, Th before the aforesaid time of the taking aforesaid, a long before the aforesaid *I. E.* had any thing in t aforesaid sixteen acres of Land with the Appurtena ces, one *R. E.* was seized of the Mannor of *H.* wi the Appurtenances, in the County aforesaid whe of the aforesaid Place in which, &c. is, and the afo said time of taking aforesaid, was parcell in his D mesne as of Fee, and being so thereof seized, t Mannor with the Appurtenances whereof, &c held of one *R. W.* Knight, as of his Mannor of in the County aforesaid, in Socage, that is to by Fealty and the Rent of twenty pound by ye every yeare, at the Feast of Saint *Michael* the A Angell yearly to be paid, as also by the Servic doing Suite to the Court of the said *R.* of his af said Mannor of *L.* from three weekes to three wee at the aforesaid Mannor yearly to be held; and same *R. E.* of the Mannor of *H.* aforesaid, with Appurtenances whereof, *&c.* being so seized, thereof seized, after whose Death the said ma with the Appurtenances whereof, *&c.* discende the aforesaid *I. E.* as to the Daughter and Heir him the said *R. E.* the same *J. E.* being then wi the age of fourteene yeares, that is to say, at the of twelve yeares, and the said *W.* is the next of dred to the said *I. E.* that is to say, the Brother *Elianor*, the Wife of the aforesaid *R. E.* and Mo

f the aforeſeid *I. E.* to whom the aforeſaid Mannor f *H.* with the Appurtenances whereof, *&c.* cannot rom the aforeſaid *I. E.* by hereditary Right diſcend, y which the cuſtody of the aforeſaid Mannor of *H.* ith the Appurtenances whereof, *&c.* and of the a- oreſaid *I. E.* untill the lawfulll age of furteen years of er the ſaid *I. E.* pertaines, by which the ſaid *W.* the oreſaid time of taking aforeſaid, was of the Cuſtody f the ſaid Mannor of *H.* with the Appurtenances hereof, *&c.* and of the aforeſaid *I. E.* poſſeſſed, for hat at the ſame time in which, *&c.* the ſaid *I. E.* as within the age of fourteen yeares. And being ſo hereof poſſeſſed, afterwards, and before the aforeſaid me of taking aforeſaid, he put his aforeſaid Cattell, n the aforeſaid place in which, *&c.* to feed on the raſſe then thereupon growing: Which ſaid Cattell ere in the aforeſaid place in which, *&c.* feeding up- n the graſſe then growing, untill the aforeſaid *I.* the ay and yeare in the Declararion above ſpecified, at aforeſaid, took the aforeſaid Cattell of him the ſaid and them unjuſtly detained, againſt Sureties and ledges, untill, *&c.* as the ſaid *W.* againſt him com- laines; and this he is ready to aver, whereupon for hat the aforeſaid *I.* above acknowledgeth the taking f the aforeſaid Cattell, in the aforeſaid place in hich, *&c.* The ſaid *W.* prayes Judgement and his Da- ages, by reaſon of the taking and unjuſt detaining of he aforeſaid Cattell, to be adjudged unto him, *&c.*

The defendant maintaines his Plea, and traverſes the Tenure in Socage.

AND the aforeſaid *I. N.* as formerly ſaith, that the aforeſaid ſixteen acres of Land with the Ap- urtenances, are, and at the aforeſaid time of taking

aforesaid, above supposed to be done, were the sole and free Tenement of the aforesaid *I. E.* as he before hath alledged, without that, that the aforesaid *R. E.* held the aforesaid Mannor of *H.* with the Appurtenances whereof, *&c.* of the aforesaid *R. W.* Knight, as of his Mannor of *L.* in Socage; that is to say, by fealty, and the Rent of twenty pence by the yeare, every yeare, at the Feast of S. *Michael* the Arch-Angell yearly to be paid, and by the Service of doing Suite at the Court of the aforesaid *R W.* of his aforesaid Mannor of *L.* from three weeks to three weeks, at the Mannor aforesaid yearely to be held, as the aforesaid *W.* hath above alledged, and this he is ready to aver, whereupon he prayes Judgement, and the return of his Cattell, together with his Damages to him the said *I. N.* to be adjudged, *&c.*

Issue upon the Traverse.

AND the aforesaid *W.* as formerly saith, that the aforesaid *R. E.* held the aforesaid Mannor of *H.* with the appurtenances, whereof, *&c.* of the aforesaid *R. W.* as of his Mannor of *L* in socage, that is to say, by fealty, and the rent of twenty pence by year, each yeare at the Feast of *S. Michael* the Arch Angel, yearly to be paid, as also by the service of doing suit at the Court of the aforesaid *R. W.* of his aforesaid Manner of *L.* from three weeks to three weeks, at the said Mannor yearly to be held, as he hath before alleadged, and this he prayes may be inquired of by the Country, and the aforesaid *I. N.* in like manner, therefore command is given to the Sheriff that he cause to come here twelve, *&c.* By whom, *&c.* And who neither, *&c.* To recognize, *&c.* Because as well, *&c.*

Here you have both a Declaration, an Avowry, [illegible] by

r to the avowry, a Re-joynder, and a Sur-rejoynder hereby you have a full and a compleat Iſſue made p.

And here note, that this avowry is for damage feant, but there are ſeverall other avowries, as,

Firſt, A man may avow for ſervices due to his lannor, as Suit to his Court, or Suit at the Mill, &c.

Or for a Rent Charge, upon Preſcription to drain.

Or for a Rent Charge generally, hee may avow.

A Man may avow for an amerciament in a Court aron.

After iſſne joyned, in caſe you would proceed to a riall, your proceeds are for the making your *Venire*, nd ſuing out your Record, and *Habeas Corpus*, as in ther actions.

Partition.

THis Action lyes in ſeverall caſes, as where Lands deſcend by the courſe of the Common Law, or by uſtome, as *Gravelkinde* Land amongſt Coheires or opartners where there muſt be two at the leaſt, whether they be Sons, Daughters, Siſters, Aunts, or therwiſe of Kin to the Anceſter from whom the Land iſcended to them.

And this Partition is made four wayes for the moſt art, whereof three are at pleaſure, and by agreement mongſt themſelves, the other is by compulſion, when y refuſe.

One partition is, where they themſelves divide e Land equally by agreement, into ſo many parts there be of them Copartners, and each chooſeth one

one share or part, the eldeſt firſt, and ſo the one after the other, as they be of age, except the eldeſt by conſent made the partition, then the choice belongeth to the next and ſo to the eldeſt laſt, according to the old Rule, he that divides, muſt not chooſe.

Another partition is, when they chooſe certain of their friends to make diviſion for them.

The third partition by agreement, is by drawing of Lots thus, i. to divide the Land into ſo many parts as there be Copartners, then to write every part ſeverally in a little Scrowle or peice of paper, or Parchment, and put the ſame Scroules up cloſe into a Hat or Cap, or other ſuch like thing, and then each Partner, one after the other as they be of age to draw out thereof one peice or ſcroule, whereon is written a part of the Land which by this drawing, is now ſeverally allotted unto them in Fee ſimple.

The fourth partition, which as we ſaid, is by compulſion, comes now to be treated of, which is, when one or ſome of the Copartners would have partition and other ſome will not agree thereto, then they that ſo would have Partition, may bring a Writ, *De partitione faciendâ*, againſt the others that would not make partition, by vertue whereof they ſhall be compelled to part, &c.

In Kent where the Lands are of the nature of Gavelkind, they call at this day their partition, Shifting which is the ſame with that the Saxons uſed, namely *Shaſtan*, which ſignifies to make between Coheires partition, and to aſſigne to each of them their portion in Latine it is called *Herciſcere*.

Partition may alſo be made by joynt-Tenants, or Tenants in common by their aſſent by deed between them, or by writ, by the Statute of 32. *Henry the eighth*, *Chapter*, 32. and by the ſtatute of 33. *Henry the eighth*.

The proceſſe in this Action is Summons, Attachment, and Diſtreſſe infinite.

Your Summons is as follows.

The Summons in partition.

THe Keepers, *&c.* If *A. &c.* then ſummon *B.* to ſhew wherefore when they the ſaid *A.* and *B.* together and undivided, hold three acres of Land with the appurtenances of the inheritance which was *M.* Mother of the aforeſaid *A.* and *B.* whoſe heires, they are in *I* the ſame *B.* to make partition thereof between them, according to the Law and Cuſtome of the Common-Wealth of *England*, denieth, and the ſame permitteth not to be done, moſt unjuſtly as ſhe ſaith, and have you there this Write, *&c.*

NOte that the Summons varies in the caſe where there are three or foure Copartners, and likewiſe where it is between Joynt-Tenants, or Tenants in Common, the Summons according to the ſeverall caſes, were too large here to inſert.

Having your Summons thus made returnable of any Terme, the Defendant may Eſſoyne if he will.

If the Defendant do Eſſoyn, it reſts on the Plaintiffs part to adjourn it, as if the Summons, *Tres Michaelis*, he may adjorne to *Craſtino Martini*, and then iſſues out from the Phillizor, a Writ called a *Pone*, returnable, *Octabis Hillarii*, and then upon that returned by the Sheriff, you muſt file your *Pone* with the Phillizor, which Warrants the making out of a *Diſtringas*, returnable, *Octabis Purificationis*, and upon that get an Amerciament of five pounds, if the Defendant appeare not, then you may have an *Alias Diſtringas* returnable in *Eaſter* Term, doubling your Iſſues,

Iſſues, and ſo Diſtreſſe infinite till he do appeare.

Where the Defendant as before doth caſt an Eſſoyn and there is no adjournment made thereof, the Defendant may enter a *Non-ſuite* againſt the Plaintiff if he be carefull firſt to enter a *Ne recipiatur* with the Clark of the Eſſoynes, upon the day of the Exceptions, upon which Non-ſuite, the Plaintiff muſt begin againe.

Where there are ſeverall Defendants, they may ſeverally Eſſoyn, if they would protract time before appearance, and where they Eſſoyn not upon the *Summons*, they may upon the *Pone*.

If they do not Eſſoyn but appear, you may declare and your Declaration.

Buck. ß.

ANtony Cooke Knight, in mercy for many defaults; And the ſame *Anthony* and *Thomas Wooton Eſq.* were ſummoned to anſwer *Peter Temple* Gentleman, of a Plea; that whereas they the ſaid *Peter* and the aforeſaid *Anthony*, and *Thomas* together and undivided, do hold to them and their Heires, the Mannor of *Doſſet alias Dorſet*, with the Appurtenances, they the ſaid *Anthony* and *Thomas* to make partition thereof between them, according to the form of the Statute in that caſe publiſhed and provided, do deny, and the ſame moſt unjuſtly permit not to be done, againſt the form of the Statute aforeſaid, &c. And whereupon the ſaid *Peter* by *T. L.* his Attorney ſayes, That whereas he and the aforeſaid A. and T. together and undivided, do hold to them and their Heires, the Mannor aforeſaid with the Appurtenances, whereof unto him the ſaid *Peter* and his Heires it belongs, to have one part of the Mannor aforeſaid with the Appurtenances, in three parts equally to be divided, and to the aforeſaid *Anthony* and his Heires,

pertaines to have another part of the same Manor with the Appurtenances, in three equall parts, as is aforesaid to be divided, and unto the aforesaid *Thomas* and his Heires it pertaines to have a third part, the residue thereof to hold to them in severalty, so that the same *Peter*, of his part of the Mannor aforesaid with the Appurtenances to him belonging, and the aforesaid *Anthony* of his part of the Mannor aforesaid, with the Appurtenances to him thereof belonging, and the aforesaid *Thomas* of his part of the Mannor aforesaid with the Appurtenances, to him thereof belonging; may be able severally to apart, They the said *Anthony* and *Thomas* to make partition thereof between them, according to the form of the Statute in that case made and provided, do deny, and the same most unjustly permit not to be done, against the form of the Statute aforesaid; whereupon he saith that he is damnified, and hath Damage to the value of a hundred pounds, and therupon he brings his Suite, *&c.*

In these Actions the Pleas are various, as the Title may be.

The Defendant may plead the Freehold solely in himself at the time of the Plaintiffs issuing forth his originall VVrit, and traverse that they hold it together and undivided, *&c.* whereupon he prayes Judgement, whether Partition ought to be made between them, *&c.*

To this Plea the Plaintif may take issue upon the Traverse, and if so they may joyn issue, and so proceed to triall.

Upon a verdict and judgment had for the Plaintif, he may have his VVrit of partition directed to the Sherif, commanding him to take twelve men of the County, and of the *Venue*, in the presence of the Coparceners to make partition, by vertue of which writ he

he ſummons a Jury of the ſaid twelve men, and in the preſence of the parties concerned, he makes partition and then his return is as followes,

By vertue of this Writ of the Keepers of the liberty of *England* to me directed, and to this partition indented annexed *J. T. D.* Knight Sherif of the county aforeſaid (ſuch a day, year, and place) having taken with me *L. N. R. R.* and twelve free and legall men of my County, and of the *Venue* within written, in preſence of *H. L. K. M.* in the VVrit aforeſaid named, in my proper perſon, I came to the tenements in the ſaid VVrit named, and there by their oath (having reſpect to the true value of the ſame Tenements with the appurtenances,) The ſame Tenements into partition into three parts equally to be parted, I have cauſed, and one part of the ſame three parts (*Viz. Inter.*) (ſuch and ſuch Land ſo butted and bounded) I the Sherif aforeſaid, the aforeſaid day and year *&c.* Thoſe to be delivered and aſſigned, have cauſed to *H. L.* in the ſaid Writ named to be had to her, in ſeveralty, according to the forme and effect of the writ aforeſaid, and as to two parts of the reſidue of the aforeſaid Tenements in the aforeſaid writ ſpecified, I the Sherif aforeſaid, certifie the Juſtices within written, that none of the part of the other two came to receive of me, the aforeſaid Sherif, the ſame 2 parts, ſo that the ſame 2 parts to the other 2 aſſign, & deliver I could not, as the writ aforeſaid exacteth and requireth, in Teſtimony whereof, as well the Seal of me the aforeſaid Sherif, as the ſeals of the aforeſaid twelve jurors to this Partition indented, or ſet, given the day and yeare aboveſaid: Upon this Returne of the Sherif, the judgment is entred, that the Partition aforeſaid made, in form aforeſaid ſhall be held firm and ſtable for ever, *&c.*

A partition thus made by the Sheriff, and by the

Oath

Oath of twelve men, and Judgement thereupon given, shall binde an Infant, though his part be unquall.

Note a partition between Joynt-Tenants, is not good without deed, albeit it be of Lands; and that they be compellable to make partition, by the Statute of 32. *Henry* the eighth, Chapter the tenth, and 2. *Hen.* the eighth, Chapter 32. because they must pursue that Act by Writ, *De partitione faciend.*

And note that you are to take out this Writ *De partitione faciend.* Executed by the Sheriff, together with the Sheriffs return *Verbatim*, into the remembrance in the Prothonoraries Office, and then the Prothonotary signes Judgment thereupon.

The Fees incident to this Action you will find in the generall Table of Fees.

We proceed now to treat of Dower.

DOwer in the Common Law is taken for that portion, *&c.* which the Widow hath for Tearm of her life, of the Lands or Tenements of her Husbands, it is called *Dower or dowery*, as a gift, because the Law it selfe doth (without any gift of the Husband himselfe) give it to her, its commonly taken for the third part, which she hath of her Husbands Lands after his decease.

To the consummation of this *Dower*, three things are necessary, Marriage, Seizin, and the Death of the Husband,

This Provision the Law hath made for a Widow, where the Husband hath not assigned in his life-time, part of his Lands to his wife.

Dower by the custome of some places, as (*Gavelkind*,

kinde Land, &c. is to have halfe the Husband's Lands.

This Writ of Dower, lyes where a man is sole seized of Lands or Tenements in Fee-simple or Fee-taile, during the Coverture between him and his Wife, where by possibility the Issue between them many Inherit, if such a man dye, his Wife shall recover the third part of all the Lands, whereof the Husband was sole seized, any time during the Coverture, by a Writ of Dower, though he dyed not seized, and although that he made Alienation thereof in his life time.

Where the Husband dyed seized, and the VVife brings a VVrit of Dower, and recovers, she shall recover Damages, for the Profits of the Land incured, from the time of the Death of her Husband, but if there were any Estate or Alienation made of the Lands, &c. during coverture, so that the Husband dyed not seized, in that case she shall recover no Damages for mean profits, although she recover the Land.

It is not necessary that seizin should continue during Coverture, for being once seized it sufficeth although he alien Lands or extinguish Rents; yet the woman shall be Endowed.

But it is absolutely necessary that the Marriage continue, for if that be dissolved, the Dower ceaseth.

In case of *Elopement*, which is where a VVoman leaves her Husband, and goes away with an Adulterer, and dwelleth with the Adulterer, without voluntary reconcilement to her Husband, by this she shall loose her Dower.

A woman

A Woman shall not be endowed of a Common without number in grosse, nor of an annuity, *&c.* nor of Rents, *&c.* If the Freehold of the Rents were suspended before the Coverture; but she shall be endowed of Tithes, of the third part of the profits of Courts, Fines, Herriots, *&c.*

Shee shall be endowed according to the value of the Land at the time of the Assignment, and not according to the value as it was in the time of her Husband, whether the valve of the Land by building or otherwise be improved, or whether it be impaired by the heir.

If the VVife be past the age of nine yeares at the time of the death of her Husband (albeit shee were but four yeares old when she was married) yet she shall be endowed.

If a VVoman marry before shee be of years to consent, which is twelve in a VVoman, and fourteen in a Man, yet that imperfect or incheat Marriage (from which either of the parties at the age of consent may disagree) after the Death of the Husband, shall give Dower to the VVife.

If the Heire, *&c.* put her out within fourty days she shall have a VVrit *De quærentina habenda*, which is a VVrit that the Law gives, where a man dies seized of Mannor, Place, and other Lands, whereof the VVife ought to be indowed, there the VVoman may abide in the Mannor Place, and there live of the store and profits thereof for the space of forty dayes, within which time, her dower is to be assigned, as by *Magna Charta*, Chapter 6.

There needeth neither liberty of Seisin nor writing to any assignment of Dower, because it is due of Common right, and the Assignment must be of some part of the Land or of a Rent, *&c.* issuing out of the same.

The assignment must be certain and absolute, m by such as have freehold, or against whom a Writ dower lies.

Assignment of Dower must be either by the She by the Kings Writ, or else by the Heir or other T nant of the Land by consent and agreement betwe them.

A Joynture was formerly no bar of Dower at t Common Law, but now it is by the Statute 27. *Henry the eighth*, if the Joynture be made the Wife, according to the Purview of that St tute.

Six things are required to a perfect Joynture.

First, It is to take effect for her life in posse on, or profit, presently after the Decease of her Hu band.

Secondly, That it be for terme of her own life, greater Estate.

Thirdly, It must be made to her selfe, and no oth for her.

Fourthly, it must be made in satisfaction of h whole Dower, and not of part, *&c.*

Fifthly, It must be either expressed or averred to in satisfaction, *&c.*

Sixthly, It may be made either before or after Ma riage.

If the Joynture be made for Marriage, the Wi cannot wave it and claim her Dower at the comm Law; but if it be made after Marriage, she may wa the same.

A Joynture made to the Wife above or under t age of nine years is good.

The Wife shall not be endowed of Lands which t Husband holdeth joyntly with another at the ti

his Death, *&c.* for that the Joynt Tenant which viveth, claimeth the Land by the Feoffments, and the Survivorship, which is above the title of Dower; the Tenants in common have severall Free-holds inheritances, and their moities shall descend to ir severall Heires, and therefore their wives shall reof be indowed.

THe processe incident to this Action of Dower are.

irst, A Summons between the *Teste*, and returne, ereof there is five returnes,

nd if the Tenant neither appeare, nor cast an oyne, entring a *Nerecipiatur*, a grand *Cape* lies to e the Lands, *&c.* for that for such his default, the nant shall loose his Land.

ut if he wage his Law of *Non Summons*, he shall his default, and then he may plead with the Dendant.

NOte that in the Grand Cape, the Tenant shall be summoned to answer to the Default, and fur- to the demandant; but in *Petite Cape*, he shall be moned to answer to the default onely, and not to Demandant, and it is called a *Petite Cape*, because cludes losse then the other.

nd if the Tenant by the returne of the Summons, ne, the Demandant adjournes fifteene dayes lon- in such case, the Attorney for the Tenant, may r with the Philizer, that the Tenant appeares prayes view, *&c.*

en a writ of view goes out, whereby the Sheriff shew the Tenant the lands in question, which sup- h the tenant knows not well what lands it is that Demandant asketh, by the returne of which writ

of View, the Tenants Attourney takes a Declar on.

NOte that where a default is made after ap rance, there a *Petite cape* is to issue forth a Demandant his suit, which is made, as likewise Grand Cape by the Phillizer of the County wh the Land lieth.

The form of the Summons in thus.

THe Keepers of the liberty, *&c.* to the Sheriff o greeting, command, *J. D.* that Justly, *&c.* render *E. D.* the third part of ten Messuages, Cottages, two hundred acres of Land, three hun acres of Meadow, and two hundred acres of pa in *C.* and *B* as her dowry, by the Endowment of in time past her Husband, *&c*, whereof she hath thing, *&c.*

In case the Tenant appear upon the summons Then you declare as followes.

Lincolne ff.

E. D. Widow, which was the Wife of *G. D* by their Attorney, demand against I. D. the t part of ten Messuages, five Cottages, and two h dred acres of Land, three hundred acres of Mea and two hundred acres of Pasture with the ap renances in *C.* and *B. &c.* as the dowry of her the E. D. by the endowment of G. D. in time pas Husband, *&c.*

To this action there may be severall Pleas, a case may require.

The most generall Plea is, (*Ne unque seizi dower*) That is to say, That the Husband was n seized of any Estate, whereof the Wife can be end ed, the form whereof is as followes.

Ne unque seizi que Dower, pleaded in Dower.

ND the aforesaid Defendant by *A. B.* his Attorney, comes and sayes, that the aforesaid *A.* ght not to have her Dowery of the Messuage and nements aforesaid, with the Appurtenances where- *&c.* Of the Indowment of the aforesaid *D.* once r Husband, *&c.* Because he saith, That the afore- d D. once her Husband, *&c.* neither at the day erein he married the aforesaid *A.* nor at any time er, was seized of the same Messuage and Tene- nts, with the Appurtenances whereof, *&c.* of such Estate, so that the aforesaid A. thereof might be in- wed.

And of this he puts himselfe upon the Country, d the Plaintiff in like manner, therefore command is ven to the Sheriff, that he cause to come here twelve *c.*

There is a Plea likewise of *Non-tenure*, which is as llowes.

Non-tenure pleaded in bar of Dower.

ND the Defendant by I. D. his Attorney, comes and sayes, that he cannot render the aforesaid A. r Dowery, of the Mannor aforesaid with the Apurtenances, because that he is not thereof Tenant, s of the free-hold, nor was, the day of the issuing rth of the originall VVrit of her the said *A.* nor any time after: And this he is ready to aver, hereupon he prayes Judgement of the VVrit aforeid, *&c.*

Issue upon the Non-tenure.

AND the aforesaid *A.* saith, that the Writ afor said, for the reasons before alledged, ought n to be quashed, because shee saith, that the d of the issuing forth of the originall VVrit of her t said *A.* (to wit, such a day and yeare) the afor said Defendant was Tenant of the Mannor afo said with the Appurtenances, as of his Free-hold, by the same VVrit is supposed; and this he prays m be inquired by the Country, and the aforesaid D fendant in like manner, therefore Commandis giv to the Sheriff, that he cause to come here twel *&c.*

Also *Nonage* may be pleaded in bar of Dower, a then it is thus,

Nonage in Bar of Dower.

AND the aforesaid *R. M.* by *T. G.* his Atto ney, comes and sayes, That the aforesaid ought not in this behalfe to have Dowry, becau he saith, That the aforesaid *N.* at the time of t Death of the aforesaid *R.* in time past her Husban of whose Endowment, *&c.* she was not of that fu age, that she should deserve Dowry, that is to s of nine yeares and a halfe: And this he is ready aver, whereupon he prayes Judgement, whether t aforesaid *N.* ought to have her Dowry of the Ten ments aforesaid with the Appurtenances, *&c.*

Issue of full age.

AND the aforesaid *N.* saith, That shee the aforesaid *N.* was at the time of the Death of hi

he ſaid *R.* in time paſt her Husband, *&c.* of ſuch ge as that ſhe might deſerve Dowry; that is to ſay, f nine yeares and a halfe and above, and this ſhe ayes may be inquired of the Country, and the ſaid *M.* in like manner, *&c.* Therefore command is iven to the Sheriff, that he cauſe to come here welve, *&c.*

Elopement may alſo be pleaded in bar of Dower, nd then it is thus.

Elopemcnt in Bar.

AND the aforeſaid *J.* and *L.* by *T. L.* his Attorney, comes and ſayes, that the aforeſaid *R.* nd *A.* ought not to have againſt them the Dowry oreſaid, of the Mannor and Tenements aforeaid with the Appurtenances, of the Endowment of he aforeſaid *E.* in times paſt her Husband, *&c.* Beanſe they ſay, that the aforeſaid *A.* in the life time f the aforeſaid *E.* in time paſt her Husband, *&c.* Of er own voluntary will and accord at *B.* in the County of *M.* left him the ſaid *E.* in time paſt her Husband, nd went from him with one *M. R.* in the Pariſh of *S.* n the County of *M.* and after there with the ſame *M.* id lead her continued life in Adultery, during the ife of him the ſaid *E.* in time paſt her Husband, *&c.* Without that, that the aforeſaid A. to the ſaid *E.* her Husband, in the life time of the ſaid *E.* in time paſt her Husband, *&c.* was reconciled unto him; and his they are ready to aver, whereupon they pray udgement, whether the aforeſaid *R* and A in this behalfe, ought to have her Dowry, of the Mannor and Tenements aforeſaid with the Appurtenances, of the Endowment of the aforeſaid E. in time paſt her Husband, *&c.*

Reconcilement pleaded to the Elopement.

AND the aforesaid *R.* and *A.* say, That they any thing before alledged, ought not to debarred from having the Dowery of the aforesa *A.* of the Mannor and Tenement, aforesaid with Appurtenances, against them the aforesaid *I. L.* cause they say, That after the departure aforesa by the said *I.* and *L.* supposed to be made, the afo said *E.* in his life time, her the said *A.* of his o accord, and without Ecclesiasticall compelling, *L.* did reconcile, and suffered her to live with hi and this they are ready to aver, whereupon they p Judgement, and the Dowery of her the said *A.* of t Mannor and Tenements aforesaid with the Appur nances, together with their Damages, by reason of t Detainer of the Dowery aforesaid, to be adjudged u to them, *&c.*

Issue upon the Reconcilement.

AND the aforesaid *I.* and *L.* say, That the aforesa *E.* in his life-time, did not reconcile in manne and forme, as the aforesaid *R.* and *A.* have abo alledged, and of this they put themselves upon t Country, and the aforesaid *R.* and *A.* in like manne therefore Command is given to the Sheriff, that h cause to come here on three weekes after the holy Tr nity, twelve, *&c.*

A man may call to warranty in Dower, and the is the Party so called to warranty, summoned in t County where he lies, and that by the ayde of th Court, and this is called a Counter-plea of the Vouch er in Dower, and is thus.

Counte

Counter-plea of the Voucher in Dower.

AND the aforeſaid *I.* by *C. B.* his Attorney, comes and calls thereupon to warranty *R. C.* Gentleman, ſummoned in the County aforeſaid, by the ayd of the Court, *&c.*

To this the Defendant may reply, that the Party calls to warranty, hath nothing in the Lands, *&c.*

And the aforeſaid *I.* ſayes, That neither the aforeſaid *R.* whom, *&c.* nor any of his Anceſtors, had any thing in the Tenements aforeſaid with the Appurtenances, in his Demeſne as of Fee, in Reverſion, or, *&c.* from the time of the Death of the aforeſaid *M. C.* in time paſt her Husband, *&c.* unto the day of the iſſuing forth of the originall Writ of her the ſaid *I.* to wit, (ſuch a day and yeare) ſo that he could thereof Enfeoff the aforeſaid *John*, or any of his Anceſtors: And this he prayes may be enquired of by the Country, and the aforeſaid *John* in like manner, Therefore Command is given to the Sheriff, that he cauſe to come twelve, *&c.*

An Annuity may alſo be pleaded in bar of Dowry, but is too long here to recite.

To this Action, in caſe the Tenant have no ſpeciall matter to plead in bar, then he may confeſſe the Action by *Non ſum informatus*, or let it paſſe by default, as in the enſuing.

Non Informatus in Dower.

AND the aforeſaid *E.* by *T. S.* his Attorney, comes, and the ſame Attorney ſayes, that he is not informed by the ſaid *E.* his Clyent, of any anſwer for the aforeſaid *E.* to the aforeſaid *P. S.* in the

the Plaint aforesaid to be given, and nothing other he thereupon saith, by which the same *P. S.* should remaine against the aforesaid *E.* thereupon undefended: Therefore it is considered, that the aforesaid *P. S.* shall recover her seizin against the aforesaid *E.* of the third part of the Mannor, Park, Free-warren, Tenements, and Advowson aforesaid with the appurtenances, and the aforesaid *E.* in mercy, *&c.*

And upon this the aforesaid *P. S.* prayes the Writ of the Keepers of the Liberty of *England*, to the Sheriff of the County aforesaid to be directed, to cause him to give her full possession of the third part aforesaid with the appurtenances, and it is granted unto her returnable here in eight dayes after S. *Michael*, and also the same *P. S.* sayes, that the aforesaid *T.* in time past her Husband, *&c.* dyed seized of the Mannor, *&c.* in his Demesne as of a Fee, and of the Advowson aforesaid, as of his Fee and right, and prayes the Writ of the said Keepers of the Liberty, *&c.* to the Sheriff of the County aforesaid to be directed, to inquire of Damages, and it is granted unto her, returnable at the aforesaid Term, *&c.*

Note that in this, as other reall Actions, when you plead for the Defendant, you say onely (*Comes and sayes*) and not as in other Actions, Defends the force and injury, *&c.*

When upon Issue joyned you would go to tryall you must proceed with your *Venire facias*, and *Habeas corpora*, and Record, as in other Actions, and upon tryal the Jury do give in damages for the main profits from the death of the Husband, and for that you shall have Execution made by the Clark of the Judgments who entreth up your Judgement.

And then you have a Writ to the Sheriff, to give possession of a full third part, *&c.* which Writ being executed by the Sheriff, is thus returned.

BY vertue, *&c.* and to the Schedule annexed (ſuch a day and yeare) I have cauſed to be delivered to *J. B.* Widow in the aforeſaid Writ named, plenary ſeizin of the third part of the Manor of *L.* with the appurtenances in the ſame Writ ſpecified (*Viz.* and rehearſe the particulars in the Writ) to be held to the aforeſaid *I. B.* in the ſeveralty, by meets and bounds, in the name of the whole Dower of her the ſaid *I. B.* to her the ſaid *I.* contingent of her whole Mannor in the Writ ſpecified, as by the Writ aforeſaid to me is commanded, *&c.*

Formedon.

In the next place we come to treat of an Action called Formedon; *which is a reall action, and that is in three wayes.*

THE firſt is *Formedon* in the Diſcender, which lieth where Tenant in taile enfeoffed a ſtranger, or is diſſeized and dyeth, the Heir ſhall have a Writ of *Formedon* to recover the eſtate.

The ſecond is *Formedon* in the Remainder, and that lieth where one gives lands in the tayl, and for default of iſſue, the remainder to another in tail, and that for fault of ſuch iſſue the land ſhall revert to the Donor, if the firſt Tenant in tayl dye without iſſue, he in the Remainder ſhall have this Writ.

The third, is a *Formedon* in Reverter, and that lieth, where the Tenant in Tayle dies without iſſue, and he in the Remainder dies alſo without iſſue, then the Donor or his Heirs, ſhall have a *Formedon* in Reverter.

Where

Where Tenant in tayle aliens or is diſſeized, or if a Recovery be had againſt him by default, and that he die, his Heir ſhall have a *Formedon*, for the Heir ſhall not have other Recovery for the poſſeſſion of his Anceſtor then by *Formedon*; but if he be outed of his own poſſeſſion, as if he be ſeized and put out, he ſhall have his Writ of Aſſize.

Formedon lies by the Heire of a gift made before the Statute of *weſtminſter* 2. where the Donee after the ſtatute aliens and dies.

Where there is a Tenant in Dower or by the Curteſie.

The Reverſion to another in tayle, if one intrude after the Death of the Tenant in Dower, or by the Heire of courteſie, he in the Reverſion ſhall not have intruſion, but a *Formedon*.

Woman in tayle takes a Husband, which aliens, and after they are divorced, and after the Wife dies, the Wife ſhall in this caſe have a *Formedon*, and not a *Cui in vita*.

If Tenant in Tayle lets for life, and the Tenant for life aliens in Fee, the Tenant in tayle ſhall have *Formedon* at his pleaſure.

Where Land is given to one for life, the Remainder to the Father in Tayl (if it were executed in the Father) and he aliens, the Iſſue may have a *Formedon in Diſcender* generally, or may have a ſpeciall Writ, making mention how it was given for life, the Remainder to his Father in Tayle, and one or other is good.

In conveyance of degrees, you need not name him Heir, but Son of him which was not ſeized, but it is a ſurer way to name him Son and Heire to every one, if he were ſeized or not; but he cannot omit any in his Writs which were ſeized.

If the Demandant omit in *Formedon*, one who held

the

the Eſtate, that is to ſay, who was ſeized, the Writ ſhall abate.

The Demandant in this Writ ought to make his diſcent by all which hold the Eſtate, otherwiſe the Writ ſhall abate.

Though the Demandant be made Heire to him which dyed in the life time of his Father, which was not ſeized, yet the VVrit ſhall not abate, but is good.

Note by the Regiſter it is held, that he ought to make him Sonne to every one, and Sonne and Heire to him which laſt holds the Eſtate; but if he makes him Sonne and Heire to every one, that is more, and good, notwithſtanding that every one did not hold the Eſtate.

The Writ is not the worſe, although in the ſame it be mentioned that he is Heire of one, or that he ſhould have ſcarce been Heir to him if he had lived, if he be Heire to him, that laſt was ſeized.

The Demandant in *Formedon*, ought to name him Sonne and Heire to him that was ſeized, but if one ſurvive his Father, and were not ſeized he neede not name himſelf Heir but Son only.

Formedon did abate, for that the Demandant made himſelfe Coſin and Heire to the Donee where his Father was ſeized after the Death of the Donee, and no mention was made of him.

Eſplees ſhall be alledged in *Formedon in Reverter*, in in the Donor and in the Donee, and in *Formedon in Diſcender*, and Remainder, in the Donee onely..

Thoſe Eſplees is as it were the ſeizen or poſſeſſion of a thing, Proſit, or Commodity, that is to be taken, as of a common, the Eſplees is the taking of the graſs or Common by the mouthes of the Beaſts that Common there, of an Advowſon by taking the graſs, Tithes by the Parſon preſented thereto, of Wood,

the

the selling of Wood, of an Orchard, the selling of Apples and other fruit growing there: Of a Mill, the taking of Toll is Esplees, and of such like.

NOte that in a VVrit of Right of Land or Advowson, *&c.* The Demandant ought to alledge in his Declaration, that he or his Ancestors took the Esplees of a thing in demand, or otherwise the Pleading is not good.

Formedon in Remainder, he alleadgeth Esplees in the Tenant for life, and not in the Donor.

Formedon in the Remainder, he counts upon the matter without laying Esplees in the Donor, and it is good.

Of what things a Formedon *lyeth, and of what not.*

Formedon lieth of Gorse, but not of an Advowson.

It lies of Pastnre for ten beasts, or a certain number, but not of common, for there a VVrit called (*Quod permittas*, &c.)

Formedon lies of Common in grosse.

Formedon lies of a Corody, that is to say, of Rent and certaine breads, *&c.*

It lies for the Moiety, profit of a Mill, which is granted to one and the Heires of his Body, and the Donee dyeth, and his Heire is deforced of this profit, now the Heire shall have a VVrit of *Formedon in the descender* for this profit.

The forme of the VVrit when it is in the *discender* runs thus.

In

In the diſcender.

THe Keepers, *&c.* to the Sheriff of *L.* greeting, command *T. B.* that, *&c.* he render *I. C.* the Moiety of the profits comming of two Mills of him the ſaid *T. B.* in *M.* which *R. B. &c.* gave to *T. C.* and the heires of his Body iſſuing, and which after the death of him the ſaid *T. C. &c.* Ought to diſcend *&c.*

If the *Formedon* be in the Remainder, then the Writ runs thus.

In the Remainder.

THe Keepers of the Liberty, *&c.* to the Sheriff of *G.* Greeting, command *A.* that he render *B.* one meſſuage, and twenty acres of Land, *&c.* which *C.* gave to *D.* and the heires of his body iſſuing, ſo that the ſame *D.* dyed without heir iſſuing of his Body, the aforeſaid Meſſuage and twenty acres of Land with the appurtenances, ſhould remaine to the aforeſaid *B.* and his Heires, and which after the death of the aforeſaid *D.* to the aforeſaid *B.* ought to remain by the form of the Donation aforeſaid; becauſe the aforeſaid *D.* dyed without Heire of his Body iſſuing, as its ſaid, *&c.* unleſs, *&c.*

If the *Formedon* be in the Reverter, then thus.

In the Reverter.

THe Keepers of the Liberty, *&c.* to the Sheriff of *G.* greeting, command *A.* that he render *B.* the meſſuage and twenty acres of Land with the appurtenances, in *G.* which *C.* father of the aforeſaid *B.* whoſe

B. whose Heire he is, gave to *J.* and *E.* his Wife, and the Heires of their Body issuing; and which after t Death of the aforesaid *J.* and *E.* ought to revert to aforesaid *B.* by form of the gift aforesaid, for that aforesaid *J.* and *E.* dyed without Heires issuing their bodies, as he sayes, *&c.*

This Writ is called a Summons, and hath nine R turnes, betwixt the Teste and the returne, and t Processe are the same which are in Dower after Summons, that is a Grand *Cape*, VVrit of *View*, a *Petite Cape.*

In this Action, as also in that of Dower, and ot reall Actions, the Plaintiff is called Demandant, a the Defendant Tenant, and in mixt Actions, Plaint and Defendant.

Note that there is great care to be taken by the A torneys on both sides, in the course of casting Essoyn adjourning and entring *Non recipiatur* with the Cl of the Essoynes, and getting *Non Suites*, for that ther by much prejudice or advantage may come to th Clyents causes.

If we should now in this Action, as in that Dower, descend to the severall Declarations, in ord to the severall *Formedons in Discender, Remainder,* a *Reverter*, together with the various Pleas thereto, would take up more room, then can be spared in th little Tract.

Let it suffice that we told you that the Proceed were much alike to that in Dower.

Let's Proceed to Quare impedit.

Quare Impedit is a Writ, and it lyeth where a m hath an advowson, and the Parson dyeth, a another

nother presenteth his Clark, or disturbeth me to pre-nt, then he may have the said VVrit.

Assize of *Darreyn presentment* lies, where I, or my An-stors have presented before, and where a man may ve an Assize of *Darreyn presentment*, he may have also *Quare Impedit*, but not contrariwise.

Also if the Plea be depending between two Parties, nd be not discussed within six Months, then the Bi-op may present by *Lapse*, and he that hath right to esent, shall recover his damages, as it appeares by e Statute of *Westminster* 2. Chapter the fifth.

Also if one have right to present after the death of arson, and bringeth no *Quare Impedit*, or *Darreyn esentment*, but suffereth a Stranger to usurpe upon m, yet he shall have a Writ of right Advowson, but is writ lieth not, unless he claim to have the ad-owson to him and his Heires in Fee-simple.

A *Quare impedit* may be brought by him who hath a rant of the next avoydance.

It lies for the Moiety, or third part of the Advow-n, and of the Advowson, or Moiety of the third art,

It lies for a Chantry which is a Donative, and hath it by Letters patents, and that it be void, and e present to it his Clark, who is disturbed by ano-er, or another presented to the said Chantry, he hich hath the Right, shall have his *Quare impe-it.*

Formerly a *Quare impedit* might be brought for an bbey, or *Priory.*

A *Quare impedit* lay likewise for an Hermitary, its ought formerly against the Bishop, together with thers that claim or disturb: The form of the VVrit enerally is thus.

Quare impedit.

THE Keepers of the Liberty of *England*, &c. to the Sheriff of *L.* Greeting, *&c.* command *A.B.* that juſtly, *&c.* he permit *T.L.* to preſent a fit Parſon to the Church of *L.* which is voide, and belongs unto his Donation, *&c.*

This Writ is a Summons at the Plaintiffs ſuite, and if there be two or three defendants, they may all eſſoyn one after the other, and after they have eſſoyned, your proceeds are the ſame, as in the Action of Partition by a *Pone* and *Diſtringas*, which makes the Proceedings of this Action very tedious, the Defendant uſing all the poſſible delayes he can, for that moſt uſually he hath gotten into poſſeſſion, and ſo holds them Plea with their owne Weapons, and gaines many times a yeare or two the profits of the Tythes.

But in caſe the Church be voide, and that the Plaintiff do feare that the Defendant will get in, or formerly that the Biſhop would Collate his Clarke, then he might have a Writ directed to the Biſhop, which is called *Ne admittas*, and this Writ muſt be brought, while the Action is depending in the Common Bench, whether by *Quare impedit*, or *Darreyn preſentment*, and this Writ ought to be ſued within the ſix Months after the voydance, for after the ſix Months he ſhall not have this Writ, for then the Living may be preſented unto by *Lapſe*, and therefore it is in vain then to ſue this Writ, for that the Title of preſenting is devolved to the Biſhop, but the King might ſue this Writ after the ſix months, having a Writ of *Quare impedit* or *Darreyn preſentment* depending, according to that *Maxim*, *Nullum tempus occurrit regi*, and the Writ of *Ne admittas*, is as follows

lowes, in case it were for the King in his time.

A Ne admittas.

CHARLES by the grace of God, *&c.* To the Venerable Father in Christ *W.* by the same grace, Bishop of *Wincheſter* greeting. We prohibit you, that you admit not any parson to the Church of S. which is void, as it is said, and for the Advowson whereof there is contention moved in our Court between us and *A.* (If between private persons) then (between *A.* and *B.*) untill it be discussed in the same Court; whether unto us or unto the aforesaid *A.* it pertaineth to present unto the Advowson of the same Church, *&c.*

Note that the Defendant as well as the Plaintiff may sue out this Writ, if the Defendant do suppose that the Bishop will admit the Clark of the Plaintiff, the suite depending, but as we said before, this Writ of *Ne admittas* lies not, unleſſe the Plea be depending in Court, by *Quare impedit* or *Darreyn preſentment*, and for that purpose there is a VVrit in the Register, directed unto the chief Justice of the Common Bench, to certifie the King in the Chancery, whether there be any Plea depending before him and his companions, by VVrit between (such and such) and by this it seemed, that the *Ne admittas* should not be granted, before the King were certified in Chancery, that such a Plea of *Quare impedit*, or *Darreyn preſentment*, were depending in the Common Bench. But at this time the course is otherwise, that the *Ne admittas* may be granted out of the Chancery directed unto the Bishop, that he shall not admit, *&c.* before that the King be certified in Chancery, that such Plea of *Quare impedit* or *Darreyn preſentment* is depending in the Common Bench.

And if the truth be that there be no ſuch Plea d pending in the common Bench, then the party greiv may require the chiefe Juſtice to certifie the King i his Chancery, that no ſuch plea is there depending upon which the party greived ſhall have a VVrit avoid the *Ne admittas.*

If the Defendant or Defendants in this Action appear, you muſt prepare your Declaration, where you muſt lay down your Title, which many tim cauſeth the Declarations and pleadings to be ve long in this Action, and therefore cannot be expect to be inſerted here, as in other ſmall ones.

In caſe after ſpeciall pleadings, you come to Iſſue, and having your iſſue joyned, and your pa book made up, and that you would go to triall, y muſt make your *Venire facias*, which differs not fr other *Venire facias*, but onely in theſe words, (o Plea *Quare impedit*) and that made, ſigned, ſe ed, and returned, you muſt ſue out your *Habeas pus*, and proceede with your Record, as in ther.

VVhen you have a verdict for the Plaintiff, and *Poſtea* returned, and Judgment entred, you then have a writ to the Biſhop, to admit your Cl or to the Metropolitan, which is as thus, when the covery is had againſt the Biſhop himſelf.

The King, *&c.* To the venerable Father in Ch *W. Biſhop* of *Wincheſter.* greeting. VVhereas *T.* Knight, in our Court, *&c.* hath recovered aga you his preſentation to the Vicarridge of *W.* V command you, that at the Preſentation of him the *T.* to the aforeſaid Vicaridge, you admit a fit perſ *&c.*

And if a man have his recovery againſt any o then the Biſhop, then the writ that ſhall be made to the Biſhop ſhall be in this wiſe.

VVher

WHereas *T. L.* Knight, hath recovered againſt *I. P.* his Preſentation, *&c* VVe command you, that notwithſtanding the claime of the aforeſaid *I. P.* to the preſentation of the aforeſaid *T. L.* you admit a fit perſon, *&c.*

Note that upon this VVrit, he ſhall have an *alias*, and a *Plures*, if the Biſhop do not execute the VVrit, and an Attachment againſt the Biſhop if neede be.

Come we now to Actions of Waſte.

THIS Action lies, where Tenant for Tearm of years, Tenant for Tearme of life, Tenant for Tearme of anothers life, Tenant in Dower, Tenant by the Courteſie of *England*, or Guardian in Chivalry, doth make waſte or deſtruction upon the Land or Houſes, that is to ſay, pulleth down the Houſe, cutting down timber, or ſuffereth the Houſe willingly to fall, or diggeth the ground, then he in the Reverſion ſhall have a VVrit for the waſte, and ſhall recover the place where the waſte was done, and treble damages againſt him that hath committed waſte.

But if a man cut downe Timber without licenſe, and therewith repaire old Houſes, that is held no waſte, but if hee therewith build new Houſes, then the cutting downe of ſuch Timber is VVaſte alſo.

The cutting downe of underwood, or VVillowes, which are no Timber, ſhall not be ſaid to be waſte; but where they grow in the ſight and ſhadow of the Houſe.

There are both negligent and voluntary waſte and theſe are alike puniſhable, as where the Tenant or Leſſee is bound by Law to keepe the Houſe in good repaire, as they were, when hee came to them.

In this caſe if hee do not ſo, bnt ſuffer any part of it, by his negligence to grow ruinous, this is VVaſte, for which the Leſſor, may ſue the Leſſee.

VVhere there is no Timber upon the Lands to make repaire, yet is it waſte to ſuffer it to decay, for this, that the Tenant muſt procure Timber at his own charge.

Its waſte where a man proſtrates, abates, or breaks down any of the houſing, either the whole or part (that is) any of the principall VValls, or VValls of partition in Chambers, whether they be of ſtone or Mud.

VVhere by a violent tempeſt, *&c.* the Houſe comes to be uncovered, it ought to be repaired by the Tenant in convenient time, otherwiſe it is waſte, to ſuffer the Houſe to be burnt by negligence, *&c.* is waſte.

If the Houſe be ruinous, when the Tenant firſt comes into it, and he pull it down and do not build it up again, this is waſte.

VVhere a man either takes away, pulls, or breaks down the VVainescotes, Doores, VVindowes, Benches or any other things that are inſeparable incidents to the Houſe, being ſet up and faſtned by the Leſſor or Leſſee, or other, is waſte.

What is ſaid to be Waſte in Trees or Woods.

WHere there is Oake or Aſh which are held Timber, in moſt Countryes, (and Elme in ome Countries where Timber is ſcarce) whether oung or old, above or under twenty yeares of age, to ell this, or to imploy it to build a new Houſe, or a new oom, or any other purpoſe then to the Repaire of the d Houſe, or Houſing which are on the Land, or were the time of the Leaſe, *&c.* in decay by age or Tem-eſt, is waſte.

If a man fell Timber, although with an intent for eparations, and if he after ſell it, or imploy it to any her uſe, this is waſte, and if after ſale he buy it again, nd then imploy it for Reparations yet this hath been eld to be waſte.

VVhere a man fells Timber for Reparations, and imploy it, yet if it be done at ſuch an unſeaſonable me, as that the Timber die in the root; this is waſte.

To cut down a VVood, and after to ſuffer cattell to op it when its newly felled, whereby it is killed, or root and ſtub it up, this is waſte.

To cut down Timber Trees for fire-boote, hedge-oote, *&c.* where there is enough of other boot, this is aſte.

To cut downe ſuch Trees for fireing, as are fit for etter uſe, being Timber, and onely hollow, and dry at e top is ſaid to be waſte.

But if they be hollow, dry, and dead throughout, at they bare neither fruits nor leaves in Summer, if e Tenant cut down ſuch Trees for fire-boot, it is no aſte.

To cut down more for fire-boot, hedge-boot, and

houſe-boot,(to keepe it as he found it)then is neceſſary,or to cut down green wood when there is ſufficient dry,and dead wood, is waſte.

To cut down Fruit-Trees, Apple-Trees or Pear-Trees, is waſte, if they be growing in a Garden, although for Reparation, is waſte.

Such Fruit-Trees although halfe broken by the winde or otherwiſe, if they do yet beare fruit, or the young ſprings of them, that may beare fruit, if the Tenant cut them downe, or pull them up, it is waſte.

Where a man eares up deepe Meadow, not plowed in mans memory, or grubs up wood by the roots, and turns it into arable, or on the contrary, turns arable into wood,its waſte.

To open or digg new Quarries, for Coale, Stone, Mettall,Gravell,Lyme,Clay, or the like,this,unleſſe there be ſpeciall words in the Leaſe to warrant it, is waſte, although it be not waſte for a man to dig forward in a Mine that was opened before.

Its no waſte to digge the Land, for Gravell, Clay *&c.* For neceſſary reparations, *&c.*

HAving gone thus far in ſhewing what is waſte, let the Attorney be well adviſed he bring not an Action of waſte,where the Leaſe or other Writing, by which the Tenant holdeth or claimeth, have that clauſe in it(without impeachment of waſte) in which caſe the Leſſee can do no waſte, *&c.*

For the unfoulding of this clauſe (without impeachment of waſte) obſerve that,

An impeachment of waſte doth ſignifie a reſtraint from committing of waſte, in Lands or Tenement, *&c.*

And this word (without) added to impeachment of waſte intimates a liberty to commit waſte, and an

Eſtate

Eſtate without any ſuch reſtraint.

Thoſe and the like words inſerted in the Deed, *&c.* are ſaid to be annexed to the Eſtate, and they doe change the quality of the Eſtate, and make the Tenant herein, in the nature of a Tenant in Taile, and it adds that priviledge thereuuto, that they give the Leſſee a Power and Intereſt to make waſte, and to diſpoſe the things to his own uſe, and here if the Leſſor bring an Action of waſte, the Tenant may bar him with this clauſe.

If it be not thoſe very words, or of the like ſence, they are not good, for if the words be, without impeachment of waſte, by any Writ of Waſte, the words in this caſe are more tyed up, and are not ſo large, they give not ſuch a power to the Tenant, nor alter the property, they only diſcharge the Action, ſo that the Land-Lords can bring no action againſt the Tenant for the Waſte done.

The words (without impeachment of Waſte) muſt be inſerted in the ſame Deed, whereby the Eſtate is made, or another Deed made at the ſame time, for if he make his Leaſe without this clauſe, and after willeth that the Leſſee ſhall hold without impeachment of waſte; its held, thoſe words work nothing, either to diſcharge the Action, or give an intereſt,

If a man make a Leaſe for life, and by his Deed grant that if any waſte be done, it ſhall be redreſſed by Neighbours, and not by Suite or Plea, yet an Action of waſte will lye.

This priviledge gained by thoſe words, where it is, may be loſt, for it is annexed onely to privity of Eſtate: And therefore if one that hath this priviledge annexed to his Eſtate, agree to change his Eſtate, the priviledge is gone, as where he that hath a Leaſe for yeares, with this clauſe in his Deed, accept

ecpt of a Deed of confirmation of his Eſtate with this clauſe.

The Proceſſes incident to this Action are,

1. A Summons which is made by the Curſitor of the County, where the Houſe or Land lies.

This Summons if againſt a Tenant in Dower, is as followes.

THE Keepers of the Liberty of *England*, &c. To the Sheriff of *L.&c.* If A.D. ſhall ſecure the &c. Then ſummon by good Summoners *T. B.* which which was the VVife of *C.* that ſhe be before our Juſtices at *Weſtminſter*, on the morrow after the holy Trinity, to ſhew wherefore ſhe hath made waſte, ſale, and Deſtruction, in the Lands, Houſes, VVoods, and Gardens which ſhee holds in Dowry of the Inheritance of the aforeſaid *A.* in *N.* to the diſinheriting of him the ſaid *A.&c.*

Neither in this VVrit nor in a VVrit of VVaſte againſt a Guardian, a man ſhall not be tyed to rehearſe the Statute which gives a VVrit of VVaſte, for the very reaſon, that they were actionable before the Statute.

If the VVrit be againſt Tenant for Tearm of life, or of yeers, then it goes in this form.

THE Keepers, *&c.* if *A.&c.* VVherefore by the Common Councell of the Commonwealth of *England*, It is provided that it ſhall not be lawfull for any to make waſte, ſale, or deſtruction, in Lands, Houſes, VVoods, or Gardens; the ſaid *B.* of Lands, Houſes, and Gardens in *L.* which the aforeſaid *A.* demiſed unto her, *&c.* hath made waſte, *&c.*

This writ being returnable on the day of three weekes after Saint *Michael*, the Defendant may if he pleaſe, Eſſoyn upon that return, which if he do, the

e Plaintiff may adjourne it, unto the morrow after
. *Martin*, which if ſo, then the next proceſſe is a *Pone*,
hich is to be made by the Phillizer of the County,
d may be made returnable in eight dayes of Saint
illary.

Upon the returne of this *Pone*, and filing it with
e Phillizer, he maketh out a *Diſtringas* which you
ay have returnable in eight dayes of the Purifica-
on of the bleſſed Virgin *Mary*, as we ſhewed before
the caſe of Partition, *&c.* And upon that *Diſtrin-*
s you may have an **Amerciament**, in caſe the De-
ndant appeare not; and then an *Alias* and *Plures*
iſtringas, and further Amerciaments. And as I told
u before in other Actions, in caſe the defendant Eſ-
yn not upon the Summons, he may upon the *Pone*,
n caſe the Defendant appear, and that you declare,
ur form is as followes; in caſe it be againſt Te-
nt for years.

Wilt. ſſ.

A. *A.* Knight and Baronet, was ſummoned to an-
ſwer *W. Earle* of S. of a Plea wherefore, where-
by the Common Councell of the Commonwealth
England, it is provided, that it ſhall not be lawfull
r any to make waſte, ſale, or deſtruction of Lands,
ouſes, VVoods, or Gardens, to him demiſed for
earme of life or yeares, he the ſaid *A.* of Houſes in
. which he held for tearme of yeares, by the de-
iſe of the aforeſaid Earle, hath made VVaſte, Sale,
nd deſtruction, to the diſinheritance of him the ſaid
arle, and againſt the forme of the proviſion afore-
id, *&c.* and whereupon the ſame *Earle* by *E. H.* his
ttorney ſayes, that whereas he himſelfe was ſeized
one meſſuage with the appurtenances called *B.*
arme Houſe in D aforeſaid in his Demeſne as of
ee, and being ſo thereof ſeized, (ſuch a day and
year)

yeare) at D. aforeſaid, did demiſe the meſſuage a
foreſaid, with the appurtenances (amongſt othe
things) to the aforeſaid *Anthony*, to have and to hol
to him the ſaid *A.* and to his Aſſignes, from th
Feaſt of St. *Michael* the Arch-Angel then laſt paſt
unto the end and tearme of twelve yeares from
thence next following, fully to be compleate and en
ded; by vertue of which demiſe, the aforeſaid *A.* int
that Meſſuage with the appurtenances did enter, an
was thereof poſſeſſed, and he being thereof poſſeſſe
the ſame A. made waſt, ſale, and deſtruction i
the meſſuage aforeſaid with the appurtenances,
Houſes, that is to ſay, by throwing down two Barne
the price of either of them twenty pounds, parcel
of the meſſuage aforeſaid above demiſed, and tw
Houſes called out-Houſes, the price of each of the
eight pounds, in like manner parcell of the Meſſu
age aforeſaid, above, as aforeſaid demiſed, and th
Timber of the ſame Barnes and Houſes ſo throw
down, taking, burning, and ſelling to the diſinhe
ritance of him the ſaid *Earle*, and againſt the forme
the proviſion aforeſaid, whereupon he ſaith that he
damnified, and hath damage to the value of one hun
dred and fifty pounds, and thereupon he brings hi
ſuit, *&c.*

And the aforeſaid A. by I. D. his Attorney, come
and defends the force and injury when, *&c.* an
whatſoever, *&c.* And by proteſtation that the afore
ſaid two barnes, and two out-Houſes, were not pa
cell of the meſſuage aforeſaid, to him the ſaid A. b
the aforeſaid *Earle*, in forme aforeſaid demiſed; b
proteſtation alſo, that the ſame Barnes or out-Houſes
were not of ſo much value as the ſaid *Earle* by hi
Declaration aforeſaid hath above ſuppoſed, for Pl
he ſaith, that he hath made no waſte, ſale, or deſtru
ction in the Meſſuage aforeſaid, as the aforeſaid *Ear*
hath

hath above againſt him declared, and of this he puts himſelfe upon the Country, and the aforeſaid *Earle* in like manner. Therefore command is given to the Sherif that he cauſe to come there in eight dayes after the purification of the bleſſed *Virgin Mary*, twelve, *&c.* By whom, *&c.* And who neither, *&c.* To recognize, *&c* Becauſe as well, *&c.*

Thus you have a Declaration in waſte, and a Plea pleaded to it, and iſſue joyned, and this is againſt Tenant for Tearme of yeares: now the Declarations in this action vary, as to the ſeveral perſons that bring the Action, and the ſeveral perſons againſt whom it is brought.

As where it is brought by the Heire in tail, againſt Tenant for life.

VVhere it is againſt Tenant in Dower, as before you ſaw in the Summons.

Alſo where the Purchaſer of the Reverſion brings it againſt Tenant for years.

Alſo it may be brought after a Fine levied; in all which caſes the Declaration muſt vary according to the cauſe, in all which caſes, as alſo in divers other proceedings of other natures, I refer you to a Book printed in *Eaſter* Term laſt, intituled, Declarations and Pleadings in Engliſh, Collected by *Richard Brownlow* Eſq. which would ſwell this ſmall Tract beyond its intended bigneſſe.

Now as the Declarations are various, ſo are the Pleas incident to them, for they may be either Generall, or ſpeciall.

The generall Plea is, no waſte made, *&c.*

The ſpeciall Pleas are many, either in way of Juſtification, or excuſe, as the caſe is.

It is a good Plea if the waſte be laid, to be in not repairing, *&c.* That it was repaired before the Action brought, and this muſt be pleaded ſpecially.

But

But to plead it was repaired after the Act brought, it is no good Plea.

It is a good Plea to any waſte, that the Leſſor gave Authority to do it.

It is no good Plea to ſay, that the Plaintiff had covenant to deliver Timber from off the Land, to ſell it, and refuſed, for the Defendant in this caſe may take it.

It is a good Plea to ſay, the Houſe or Trees were burnt or ſpoyled, by fire, water, or winde, or that the ruine of them, was cauſed by ſome extraordinary act of God.

It is a good Plea to ſay, that the houſe fell before the Leaſe, or that it was ſo extraordinary ruinous, and the Timber ſo rotten, as that it would not bear repairing.

It is a good Plea to ſay, that the leaſe is ſurrendred to the Leſſor, and he hath accepted it.

It is a good Plea that the plaintiff hath entred upon the Land, and before ſuch his entry, there was no waſte committed.

It is a good Plea to pleade that the Plaintiff hath granted away his Eſtate, and before the grant there was no waſte committed.

If the Plaintif by good words do effectually release the waſte, this is a good Plea.

Where the Leaſe was made without impeachment of waſte, it is a good Plea on the part of the Defendant.

It is no good plea in this action for cutting down Timber, or pulling down the houſe, that the Leſſor took away the Timber or materialls, *&c.*

It is no good Plea, that the Leſſor hath a covenant from the Leſſee not to do waſte.

It is no good plea for the tenant in an action of waſte for cutting of timber, to ſay, that he cut it and kept

ll there ſhall be need, nor to ſay he cut it generally neceſſary reparations, unleſſe he ſay withall that imployed it to that purpoſe.

And yet it were but reaſon it ſhould be juſtified to it a little before it be uſed, for the drying of it and king of it otherwiſe uſefull, when an occaſion of is apparantly at hand.

t is a good plea for the defendant to ſay, that he it to make poſts for incloſures, if he can withall ſcribe that there have been alwayes ſuch incloſures re.

But theſe and many other, may now at the Electi- of the Defendant be omitted, and by the late Act 2. *Octob.* 1650. he may plead not guilty, or ſome other generall iſſue may be pleaded, and the ſpe- l matter may be given in Evidence.

Upon theſe or any other iſſue joyned, and that you nd to go to tryall, the directions that were given ore in Partition, Dower, *&c.* will guide you, both the making your *Venire Facias*, *Habeas Corpora*, and *ord*, and likewiſe for your tryall and return of your lea, and entring of judgement.

n this Action as before you have heard, your judg- nt is, that the Plaintiff ſhall recover the place waſt- nd his treble Damages.

a caſe the Defendant pleads not, but let it go by ault or confeſſeth the action, then a Writ of in- ry is awarded, and upon that the Sheriff is to in- re by the Oath of twelve Jurors, what damage the intiff hath ſuſtained, which he returnes in an In- ſition, and then the party hath Judgment to recover treble of it, and then hath he as in a Verdict after gement entred, a Writ of ſeizin awarded, which is cted to the Sheriff of the County, where the houſe ands lie, to give poſſeſſion to the Plaintiff of the ce or places waſted, *&c.*

War-

Warrantia Carta *comes next to be treated of.*

Warrantia Carta is a Writ that lies for him that is Enfeoffed with Warranty, and is afterward impleaded in an Assize, or other Action, in which he cannot Vouch, then he may have this Writ against the Feoffer, or his Heire, to compell them to warrant the said unto them.

The Processe in this action are Summons in the first place, which is as follows.

The Summons in Warrantia Carta.

THE Keepers of the Liberty of *England*, *&c.* Command *A.* that justly, *&c.* he warrant to *B.* one Messuage with the appurtenances in *D.* which he holdeth and claimeth to hold of him, and whereof he hath his Deed as he saith, and unlesse, *&c.* Or otherwise that justly, *&c.* he Warrant to *B.* the Mannor of *N.* with the appurtenances, and the Advowson of the Church of *N.* which he holdeth, *&c.* And whereof he hath his Deed, or the Deeds of *D.* his Father or Mother, or any other of his Ancestors, whose Heire he is as he saith, *&c.*

And although this Writ suppoſeth that he holdeth of the Defendant; yet is it not materiall whether he holdeth of him or no.

And also if the Plaintiff hold by Homage *Avaſtre* of the Defendant any Land, and is impleaded, and hath not any Deed of it, yet he shall have this VVrit of *Warrantia Carta* against the Defendant, and the VVrit will say, (whereof he hath his Deed) and yet he hath not the Deed to shew, but onely holdeth by Homa-

Homage Anceſtrell, which imployes a VVarranty, and for this in this caſe, theſe words (whereof he hath his Deed) is not materiall.

If a man leaſe Land for Tearme of life, rending a certaine Rent, or make a Gift in taile, rending Rent without Deed, and after the Leſſee, or Donee is impleaded, in ſuch Action where he cannot vouch, then he ſhall have this VVrit of *Warrantia Carta*, againſt the Leſſor or Donor, or his Heire, who hath the Reverſion; for this Reverſion and Rent reſerved, takes a VVaranty in Law, by the Statute of Bigamie the laſt Chapter, although he had not any Deed of it.

If a man give Land to another in Fee, by Deed, by theſe words, (I have given and granted, *&c.*) in this caſe, he ſhall be held to warranty of this Land to the Feoffee, by theſe words, and if the Feoffee be impleaded, he ſhall have a VVrit of *Warrantia Carta* againſt the Feoffor by theſe words, (I have given and granted, *&c.*) but not againſt his Heire, for the Heire ſhall not be bound unto VVarranty by the Deed of his Father, unleſſe he oblige himſelfe and his Heirs to warranty, *&c.* by expreſſe words in the Deed, as to (I and my Heires all the aforeſaid Lands, *&c.* will warrant, *&c.*)

Note that he ſhall not have this Action of *Warranta Carta* againſt the Feoffee, or againſt him againſt whom he hath VVarranty, if he be impleaded in any Action wherein he may vouch him, for then he ought to vouch him to VVarranty, and if he will not vouch him in the Action, he ſhall not afterwards have a Writ of *Warrantia Carta*.

Note that the Vouchee is either to defend the right againſt the Demandant, or to yeeld him other Lands, *&c.* in value, and extendeth to Lands, *&c.* in Eſtate of Free-hold or Inheritance, and not to any

any Chattell, reall, perſonall, or mixt, ſaving ouely in caſe of a Wardſhip granted with Warranty; for in the other caſes concerning Chattells, *&c.* the Vouchee ſhall have an Action of Covenant, if he hath a Deed. And an Action of the caſe, or an Action of deceipt, if it be by word of mouth, *&c.*

The Proceſſe whereby the Voucher is called, is a Summons *Ad warrantizandum*, and whereupon if the Sheriff returne that the Vouchee is ſummoned, and he maketh default, then there is awarded a *Mandatum Cape ad valentiam, &c.* When if he make default again, then Judgment is given againſt the Tenant, and he to have over in value againſt the Vouchee; but if the Sheriffe return that he hath nothing then after a VVrit of *Alias* and *Plures*, a VVrit of *Sequantur ſub periculo ſuo* is awarded, *&c.* And the Demandant ſhall not have Judgement to recover in value, *&c.* becauſe the Vouchee was never warded.

In the caſe of Homage *Anceſtrell*, which is a ſpeciall VVarranty in Law, and Lands that the Lord hath generally at the time of the Voucher, ſhall be liable to Execution in value, where he hath them by diſcent or purchaſe: But in the caſe of an expreſſe Warranty the Heire ſhall be charged but onely for ſuch Lands as he had by diſcent from the Anceſtor, which created the Warranty.

Note the Lands of the Vouchee ſhall be liable to warranty, that the Vouchee hath at the time of the Voucher, for that the Voucher is in lieu of an Action and in a *Warrantia Carta*, the Land which the Defendant hath at the time of the Writ brought, ſhall be liable to the warranty.

If a man give Lands in Fee with warranty, and bindes certaine Lands eſpecially to warranty, the perſon of the Feoffer is hereby bound, and not the Lands unleſ

unleſſe he had it at the time of the Voucher.

A man may bring his VVrit of VVarranty of Charters, *&c.* in what County he will, if the Deed beare not Date at a certain place or County, for then he ought to bring the VVrit where the Deed beares Date.

But if a man bring a VVrit of *Warrantia Carta*, by reaſon of Homage *Auncеſtrell*, &c. Then he ought to bring the VVrit in the County where the Land lies.

The Summons in this VVrit we have ſhewed you before, upon which Writ as in the caſe of waſte, the Defendant may eſſoyn, and the Plaintiff adjourn; and for want of an Adjournment of the Plaintiff, the Defendant may enter a Non-ſuit againſt the Plaintiff, provided there were a *Ne recipiatur* firſt entred with the Clarke of the Eſſoynes, upon the day of Exception; and then in that caſe the Plaintiff is put to begin again.

After the Summons comes a *Pone*, and then a *Diringas*, and if the Defendant appeare not, an *Alias Diſtringas* ſetting Iſſues, *&c.* And ſo Diſtreſſes in *Infinitum*, till there be appearance given.

In caſe the Defendant do appear, then you may declare as in the from following.

The Declaration in Warrantia Carta.

Lincolne, ſſ.

T. A. was ſummoned to anſwer *H. B.* Clark, of a Plea; that he warrant to him three Meſſuages, &c. with the appurtenances in C. which he holdeth, and claimeth to hold of him, and whereupon he hath his Deed, *&c.* and whereupon the ſaid *H.* by *J. W.* his Attorny, ſaith, That whereas a certaine Fine was

levied in the Court of the Keepers, *&c.* here, that is to say, At *Westminster*, from the day of Saint *Hilla* in fifteen dayes (such a yeare before *O. S. John* and others, naming them) then Justices of the Common Bench here, that is to say, at *Westminster* aforesaid and other faithfull persons then being present between him the said *H. B.* Plaintiff, and the aforesaid *E.* and one *Joane* then his VVife, and *R. H.* Defor ents of the said three Messuages, *&c.* with the Appu tenances, whereof the plea of Covenant was summ ned between them in the same Court, that is to s That the aforesaid *E. I.* and *R.* did acknowledge aforesaid Tenements, with the Appurtenances to right of him the said *H. B.* as those which the *H. B.* had of the gift of the aforesaid *E. J.* and and the same remised and quite claimed, fr them the said *E. I.* and *R.* and their Heires, to aforesaid *H. B.* and his Heirs for ever, and m over the said *E.* granted for himselfe and his Hei that they would warrant the aforesaid *H.* and Heirs, the aforesaid Tenements, with the appurten ces against all men for ever. By vertue of which the said *H. B.* was seized of the Tenements afore with the appurtenances in his Demesne as of F and he the said *H B.* so being thereof seized, one arrayed against him the said *H.* a certaine Assise o vell disseisin of the tenements aforesaid with the purtenances, before *P. W.* one of the Iustices o Common Bench, and *R. C.* one other, *&c.* Iust assigned to take the Assises in the County of *L.* a said, which said Assise depending, he the sai often required the aforesaid *E.* that he would rant to him the tenements aforesaid with the ap tenances, yet the said *E.* hitherto hath denied to rant to the said *H.* the tenements, aforesaid

e Appurtenances: and yet doth deny. Whereupon e ſaith he is damnified, and hath damage to the va-e of five hundred pounds, and thereupon he brings s ſuit, *&c.*

The Defendant acknowledgeth the Action.

AN d the aforeſaid *E.* by *J. E.* his Attorny comes *&c.* and ſaith, that he cannot deny the aſore, id action of the ſaid *H.* neither but that the writing oreſaid is the deed of him the ſaid *E.* nor but that he id give and grant by that writing to the ſaid *H.* and s Heires, the tenements aforeſaid with the appurte-nances, neither, but that he by that writing is held to arrant to the ſaid *H.* the tenements aforeſaid with e appurtenances in the forme in the which the ſaid hath above declared againſt him: therefore it is nſidered of, that the ſaid *E.* ſhall warrant to the ſaid the tenements aforeſaid with the appurtenances for e place and time, and nothing of being in mercy of in the ſaid *H.* becauſe he came the firſt day by ſum-ons, *&c.*

Here you have a Declaration and judgement by nteſſion.

NOte if a man recover his warranty in *Warrantia Charta*, and after he is impleaded in an action in hich he cannot vouch as by Aſſiſe, or by *Scire facias* on a fine, now it ſeemes that he ought to have no-e to him againſt whom he had received his war-nty of his action, and to pray him to ſhew what plea will plead to defend the Land.

NOte that a man may bring a Writ of *Warrantia Charta* at the Common Law, for warranty made Lands holden in antient Demeſne.

Having gone through Warrantia Cartæ *We come now to* Audita Querela.

What the Writ is.

Audita Querela is a Writ, and lieth where one is bound in a Statute Merchant, Statute Staple or Recognizance, or where Judgment is given against him for Debt, and his body in Execution thereupon, then if he have a releaſe, or other matter ſufficient to be diſcharged of Execution, and hath no day in Court there to plead it, then he ſhall have this Writ againſt him that hath ſo recovered, or againſt his Executors.

Againſt whom, and for whom this Writ is brought.

THis Writ lieth for the Party himſelf againſt whom the Judgement is had, by whom the Statute was made, or his Heire, Executor, or Adminiſtrator, upon whom the charge is come, or comming. Sometimes it is to be had againſt the Proſecutor himſelfe, and ſometimes againſt him and others that ought to bear a part of the burthen with him.

It lies againſt Ter-Tenant, without naming the Party, or Privy.

Wherefore this remedy is given, there muſt be three things in the caſe.

1. There muſt be a charge or burthen come, or comming upon him that is to have it.

2. It muſt be ſuch a Charge, *&c.* as by Law, he ought to be diſcharged of, in part or in whole.

3. It is ſuch a caſe as where he hath no other remedy for his reliefe,

The

These following Cases will cleare these particulars.

If a Judgement, or Judgement and Execution be had against one, and the Plaintiffe release him of the Debt in Fact, or that he be released of it all, or part of it in Law, and yet he sueth out Execution.

If a Judgment be had against me and another, and one of us be taken in Execution, and after are released of the Debt, or discharged of the Execution by the Party himselfe, the other may take advantage of this.

If Judgement be against two Trespassors, and one taken, and the damage satisfied by him.

The like Case if a Judgment be against two or more, upon one bond, and Execution is done upon, and satisfaction made by one of them.

If Executors sue for, and recover a Debt, and after the Testament is revoked, in this case, the Party that hath paid the mony, may get the same certified by the Bishop, and then he shall have his remedy against the Executors.

If the Conusor after Execution tender the money due upon the Statute to the Conusee, and he refuse it, or if part of it were paid at the day, and he tender the rest in Court, and yet the Conusee go on to extend it, in these Cases the Party grieved may have his remedy.

If the Statute were delivered to a Stranger to keep till certain conditions were performed, and hee doth deliver it to the Conusee, or he doth get it by fraud from him, before the condition be performed, in this case he shall be relieved by this VVrit.

If an Infant enter into a Statute, he may avoid it whilest he is in his *Minority*, by this VVrit, and the course is this: In case he be in prison, this VVrit may be sued out by some of his Friends to the Justices,

who thereupon command the Sheriff to bring the Infant into Court to be ſeen; and if the Judges judge him to be within age, after proceſſe ſent to the Conuſee they will diſcharge him. But if one that hath been an Infant, be ſued upon it, after he is of full age, this Writ doth not lie for him.

If divers be bound by one ſpecialty [Conjunctim and divilim] and the Obligee get Judgement and Execution againſt one of them, and after ſue the Eſpecialty againſt the other, he ſhall have this Writ for his reliefe.

If in the Interim betwixt Verdict and Judgement the parties have put themſelves into Arbitrement for the Suit, or the Defendant get a Releaſe from the Plaintiff, and yet the Plaintiffe doth proceed, the Defendant may have this Action; but where theſe Caſes are put, it is to be conceived before the VVrit brought the Judgement is given.

VVhere a man ſues for a thing, for which he hath formerly Judgement and Execution, there this VVrit lies.

Where a man and his Heirs are bound by an Obligation, Bond or Bill, *&c.* and the Obligee ſue it, and recover againſt the Heirs, and after ſue the Executors for the ſame cauſe; or on the other ſide after recovery had againſt the Executors, he ſue the Heirs, here the Heir or Executor ſo ſued may have this remedy for that he cannot plead it in Bar.

Where a Leſſee covenants for him and his Aſſignes to repaire Houſes, or to do any other thing chargeable upon him, after Aſſignment of his Eſtate, and he aſſign his Eſtate, and after the Leſſor, who may ſue either of them, ſue and recover againſt one of them in this caſe, if after he ſue the other for the ſame cauſe he may have this remedy.

The Proceedings in this Action are as follow.

VVhere

VVhere before Execution this VVrit is brought by the Party grieved himself, or by his Heirs, or Executors, he surmising good cause for this VVrit, must give good Baile to prosecute, and stand to the Judgement of the Court; upon which he may have a *Supersedeas*, to stay Execution; but when the Party is in prison, then it seemes there is no Baile put in, till the Conusee or Obligee answer in the *Audita querela*.

Note that after Execution executed, no *Supersedeas* doth lie.

The Processe before Execution are a *Venire Facias*, and an *Alias*, &c. And then if he come not in, the use hath been that upon motion, the party in prison may be discharged.

After those Processe a *Distringas*, and upon default after appearance, and a plea pleaded, a *Distringas ad audiendum judicium*, for by such default Judgement shall be given against him, and after Execution, the Processe is a *Scire facias*, when the party is in prison upon a *Capias ad satisfaciend.*

Where a man puts in Baile in this Action, he shall not be discharged of this Baile, but must continue till the Suit by the *Audita querela* be determined, for although the Party do not prosecute after the appearance of the Defendant, yet he must continue in prison, or stand upon his Baile.

If a man be Non-suited in one *Audita querela*, yet he may have another, but he shall have no *Supersedeas* in the second, as he had in the first.

Audita

Audita querela upon the Statute of Usury.

IT was commanded to the Sheriff, &c. whereas of the grievous complaint of *T.B.* of, *&c. R.B.* of, & And *A. A.* of, *&c.* It was shewed to the Keepers, Complaining, that whereas in the statute in Parliament held, *&c.* (reciting the Statute of Usury) as by the said statute more fully appeareth. whereas one *N. W.* such a day and yeer at *C.* did le unto one *R. B.* ninety pounds, for one year then n following, and that in consideration thereof, it then and there agreed, between him the said *N.* and the aforesaid *R. B.* that the said *N. W.* sho have by way of gaine and profit for deferring giving day of payment of the aforesaid ninety pou for the time aforesaid ten pounds, to be paid to said *N. W.* together with the aforesaid nin pounds, and also eighteene yardes of black F zes, of the price of every yard sixteen pence, wh said *R. B.* afterwards, that is to say, such a day yeare at *C.* aforesaid, made his Testament, and pointed and ordained *Agnes*, the wife of the afo said *A. A.* and one *T. Bartram*, *L. B.* and *I. B.* Children, Executors of his Testament aforesa and the same *A. A.* and one *W. L.* Gentlem Guardians of the aforesaid *T. B.* Sonne and He apparant of the said *R. B.* during the minority the aforesaid *T. B.* and afterwards there died, a whose death, that is to say, (such a day and yea at *C.* aforesaid) it was agreed betweene him t said *N. W.* and the same *A. A.* and *W. L.* that the foresaid *N. W.* should defer and give day of payme of the aforesaid ninety pounds, of the princip Debt, and of the aforesaid ten pounds for the U aforesaid, from the end of the aforesaid yeare,

e payment thereof as aforeſaid, before agreed
till Wedneſday next, after the Feaſt of *Eaſter* then
xt following, and that the ſaid A. A. and *W. L.*
one of them would pay to the ſaid *N. W.* ſix
unds thirteene ſhillings and foure pence for
ine and uſe, for deferring and giving day of pay-
ent of the ſame ninety pounds of principall Debt
oreſaid, and ten pounds for the firſt uſe afore-
d, and alſo that A. A. and *W. L.* and the afore-
d *T. B.* and *R. B.* ſhould by Recognizance ac-
owledge before *R. M.* then one of the Juſtices,
. themſelves to owe to the aforeſaid *N. W.* foure
ndred pounds, for the ſecure payment of the a-
reſaid ninety pounds of principall debt aforeſaid,
d ten pounds for the firſt uſe aforeſayd, and alſo
the aforeſaid ſix pounds thirteene ſhillings and
ure pence for the ſayd ſecond uſury aforeſayd, on
aforeſaid Wedneſday next, after the Feaſt of *Ea-*
, between the hours of one and foure in the af-
noone of the ſame day, which ſaid ſeverall ſums
the whole, doe amount unto one hundred ſix
unds thirteene ſhillings and foure pence where-
on the ſaid *T. B. W. L. R. B.* and A. A. (ſuch a
y and yeare aforeſaid) at *C.* aforeſaid, before the
oreſaid *R. M.* did acknowledge themſelves to owe
the aforeſaid *N. W.* the aforeſaid foure hundred
unds for the ſecure payment of the aforeſaid one
ndred ſix pounds, thirteene ſhillings and foure-
nce on the aforeſaid Wedneſday next, after the
oreſaid Feaſt of *Eaſter*, according to the forme, and
ect of the agreement aforeſaid, and ſo that recog-
zance and forme aforeſaid acknowledged for the
yment of the ſaid ninety pounds of principall
bt aforeſaid, and the aforeſaid ſixteene pounds,
irteen ſhillings and four pence for the uſe aforeſaid,
ceeding the rates of ten pounds for a hundred

pounds

pounds by the yeare, by vertue of the Statute aforesaid, published in the Parliament holden, &c. is void in the Law; as the said *T. B. R. B.* and *A. A.* by wayes and means convenient, are ready to make appear. Notwithstanding which the aforesaid *N. W.* now lately hath unjustly prosecuted Execution upon the aforesaid foure hundred pounds, by reason of the Recognizance aforesaid in forme aforesaid acknowledged against them the said *T. B. R. B.* and *A. A.* to the great damage and grievance of them the said *T. B. R. B.* and *A. A.* whereupon the said *T. B. R. B.* and *A. A.* to the Keepers, &c. have supplicated to provide for them a fit remedy in this behalfe; the said Keepers, being willing to do herein that which is just and to exhibit full and speedy Justice therein to the said *T. B. R. B.* and *A. A.* have commmanded the Justices here that hearing the complaint of them the said T. B. R. B. and A. A. and calling before them the parties aforesaid in this behalfe to be called, and hearing their reasons thereof, they cause due and speedy accomplishment of Justice to be done to them the said T. B. R. B. and A. A. as of right, and according to the Law and Custome of the Commonwealth of *England*, ought to be done, and to that purpose, that they should cause to come here at that day, that is to say (such a returne) the aforesaid *N. W.* to answer in and upon the premises, and further to do that which the Justices here shall thinke convenient, and consider of, and now here at this day (that is to say the return) came as well the aforesaid T. B. R. B. and A. A. by W. B. their Attorny, as the aforesaid N. W. by L. C. their Attorny, and hereupon the said T. B. R. B. and A. A. say that the aforesaid N. (such a day and yeare) lent unto one R. B. nine pounds for one yeare then next following, and that in consideration thereof, it was then and there

gr

ed between him the ſaid *N. W.* and the aforeſ*T.* that the ſaid *N. W.* ſhould have in gaine and ſit, *&c.* and ſo go on as before in the Writ, untill come to void in the Law. And this he is ready to r, whereupon he prayes judgement, and that the reſaid *N. W.* may be barred from having his Exeion aforeſaid, by vertue of the Recognizance and gement thereupon in Court here had, and that the *T. B.* and *A. B.* may be diſcharged thereof, .

And hereupon the ſaid *N. W.* prayeth liberty to ad, *&c.*

NOte that if a man enter into a Statute or Recognizance, which either is defective in it ſelfe, or voydable by ſome Law, or becauſe the Contract ſurious, as in the Declaration before ſpecified; that there be a defeazance upon it, which is kept m the Conuſor, or that the Statute is delivered by the Conuſee (which is a releaſe in Law) and Conuſee get it againe, and the Conuſee doth go in the Execution of it. In all theſe caſes, the Pargrieved may have this remedy and Writ for his reſe.

If the Statute were made through hard impriſonent of the Conuſor, he may have this Writ, *&c.*

NOte *I. W.* brought an *Audita Querela*, upon the Statute of Uſury, to be relieved in making void judgement given upon a Bond, where he hath pleaed that it was not his Deed, and it was diſallowed, nd judgement thereupon as followeth.

AND hereupon the Premiſes being ſeen, and by the Iuſtices here more fully underſtood; it ſeemto the ſame Iuſtices here that the aforeſaid Writ

of

of hearing the complaint, and the matter in the ſa
contained, was inſufficient in Law to bar the ſaid
from having his Execution aforeſayd, by reaſon of
Recognizance aforeſaid: Therefore it is conſider
of, that the aforeſaid *J.W.* take nothing by his Writ
hearing the complaint, that the aforeſaid *R.* may p
ſecute for the Execution, if, *&c.*

If a man ſue an *Audita querela* upon a Releaſe,
afterwards he is Non-ſuit, he ſhall not have an *Aud*
querela upon new matter, and yet the Law ſeems co
trary to this, where it ſays, he ſhall not delay Execu
on upon a new *Audita querela.*

If the Conuſor after Execution tender the mon
due upon the Statute to the Conuſee, and he refu
if, or if part of it were payd at the day, and he tend
the reſt in Court, and yet the Conuſee go on to e
tend it, in theſe caſes the Party grieved may have t
remedy.

The Proceſs, as we told you in *Audita querela*, we
Venire facias, *Diſtringas*, *Alias* and *Plures*, *Diſtring*
only take this further, that if the Sheriff return, t
he hath nothing, &c. Or that he cannot be found
&c. Then he ſhall have a *Capias* againſt the Defe
dant.

Curia Claudenda. *This is a Writ which li at Common Law, and is for Reparation Fences and Hedges, Mounds, &c.*

THis Writ lyes, where a man ought to incloſe h
Soyle or Land from his Neighbours, and w
not doe this, then he may have this VVrit, and
may be ſued before the Sheriff in his County Cou

r in the Court of Common-Bench. If the VVrit be efore the Sheriff, then it runs thus.

'He Keepers, *&c.* To the Sheriff, *&c.* That juſtly, *&c.* he cloſe his field in *N.* which is open to the ocument of the Free hold of *B* in the ſame Towne, or another Village, which he ought, and was wont to cloſe, as the ſaid *B.* ſayes, and as he is reaſonably to ew that he ought to incloſe it, *&c.*

If in the Common Bench, then the VVrit is us.

'He Keepers, *&c.* Command *A.* that juſtly, *&c.* he cloſe his field in *N.* which is open to the No- ment of the Free-hold of *B.* in *N.* aforeſaid, which ought, and was wont to incloſe, and unleſſe, *c.*

This VVrit may be removed out of the County, at e Suit of the Plaintiff, without cauſe.

But if the Defendant will remove it, he ought to ew cauſe in the VVrit.

And in the Writ to remove it by the Defendant, all be this clauſe, (Let Execution of this Writ be ade, *&c.* if the cauſe be true, otherwiſe not.)

This Writ lies not, unleſſe againſt him who hath e Cloſe next adjoyning unto the Land of the Plain- f, and lies not, unleſſe for him who hath an Eſtate Free-hold in the Land, for Tenant for Terme of ars ſhall not have this Writ.

If a man have a Common in a great waſte, to m and his Heirs, or for Terme of life, and he who th the Land adjoyning to this waſte, who ought to cloſe betwixt the waſte and his Land, will not make Inloſure, yet the Commoner ſhall not have this tion for the Damage which he hath ſuſtained, *&c.* though the Common may diſtraine the Beaſts,

Damage

Damage feasant to the Land which is his Comm
For the VVrit supposes to the Nocument of the F
hold of the Plaintiff, which proveth that the Plai
ought to have the Land adjoyning, if he will h
this action.

The Processes in this action is Summons, Att
ment, and Distresse, &c,

The View lies in this VVrit.

If the Defendant appeare, and afterwards m
default, he shall have a *Distringas* in lieu of a *Pe*
cape, &c. and if he make default at the day of the
turne of this VVrit, he shall have a VVrit to inqu
of damages, and also a Writ to distrain to the Rep
tions.

If the party appear, and that you come to decl
take these observations.

IN your Declaration you ought to shew the certa
ty of the Land which the Plaintiff hath the
joyning unto the Defendants Land, and the c
tainty of the Land which the Defendant hath th
adjoyning, who ought to inclose, and then you ou
to alleadge prescription to inclose.

Parco fracto, *or breaking the pound co*
next to be handled.

THIS VVrit lies, where a man distrained
Beasts of another man doing hurt in his La
or for rent or service behind, and sends th
into the Common Pound, or into any ot
Pound or place, which may be called a lawfull pou
and he which hath the property of the beasts, or a

ner perſon take the Beaſts out of the Pound, and dri-eth them to a place where he pleaſeth; In this caſe, e that diſtrains for Damage done unto him, or for ent or Services behind, may have this Writ; where-n he ſhall have Judgement to recover Damages for , and to diſtrain the Cattel again whereſoever he all find them.

For this cauſe alſo is the party offending puniſh-ble in a Court Leet.

If a man command his ſervant to diſtrain for Rent r ſervices arrear, and the ſervant diſtrain the Beaſts nd put them in pound, *&c.* and a ſtranger take hem out of the Pound; in this caſe the Maſter, and ot the ſervant ſhall have an Action of *Parco fracto*, or it is the Pound of the Maſter.

If a man diſtrain for Rent or Services, or for Da-age feaſant, and put the Beaſts in the Soile, or in he Cloſe of his friend by his Licenſe, and he which wes the Beaſts, takes them out of the Cloſe; here e which diſtraines ſhall have this Action, and not e who ought the Cloſe, for he which ought the cloſe ay have his Action, wherefore he brake his Cloſe, *&c.* For it is not his pound, but the pound of him hat diſtraineth, *&c.* The form of the Writ is thus.

THe Keepers, *&c.* To the Sherif of *Lincoln*, gree-ting, If A. *&c.* Then put, *&c.* B. to ſhew, where-or whereas he the ſaid A. in his damage at N. cer-ain Cattell, or ſo the Cattell of the aforeſaid B. had ook, and them according to the Law and Cuſtome f the Commonwealth of *England*; had there im-ounded: The ſame B. the aforeſaid pound by Force nd Armes brake, and the Cattell aforeſaid he tooke nd led away, and other harms to him he did to the reat Damage, *&c.*

Note here this VVrit is by Force and Arms, and it not put in the VVrit what manner of Beaſts they

were, nor what number, nor to whom the property of the Beasts are, unlesse at the pleasure of the Plaintiff.

Where a man commands his servant to distraine for Rent or Services, or for damage-feasant, then the Writ is thus.

TO shew wherefore whereas he the said A. in the damage of *N.* by *B.* his servant, hath caused certain Bull, or certain Cattell, to be taken, and the same B. the said Bull or Cattell according to the Law and Custom of the Common Wealth of *England* hath there *Impounded*: the aforesaid *C.* that pound by force and Armes did break, *&c.*

Where a man distrains for an Amerciament in a hundred, and impounds the Beasts, and the other Party takes them onr, the VVrit shall be thus.

WHereas the said A. by B. and C. his Bayliffe of the Hundred of N. certaine young Cattell of him the said F. at S. within the precinct of the Hundred aforesaid, for a certaine Amerciament, to which he the said F. was amercied in the same Hundred, to the use of the aforesaid A. to be levied, hath caused to be taken, and the same B. and C. the same young Cattell, *&c.*

Here in this VVrit it ought to be shewed, that the property of the Beasts were in him who was amerced for that, that he cannot distrain a Strangers Cattell for this Amerciament.

But for Rent or Services arreare, it is otherwise for there the party to whom those Reuts or Services were arrear, may distrain what Cattell he finds upon the ground, levant and couchant.

This VVrit lies, albeit the impounding be unlawfull, as where the Party that is distrained for Damage feasant

easant do offer sufficient amends after taking, and before the impounding, and the Party so distraining doth refuse it.

The like case of one that hath a Replevin, or other coloured Authority (not good in Law) by vertue whereof he gets out the Cattell.

Where a man hath a good Authority, and breaks the Pound before he demand the Cattell of the Keepers of the Pound and he do interrupt him in the taking of them, in all these Cases the Party grieved may have this Writ for his remedy.

The Processes in this Action after the Summons, are Attachment, and distresse infinite.

Rescues *we come now to treat of, and the rather for that it hath some relation to what we spak formerly of.*

THE word Rescues is two wayes applyable, either to persons or things.

To Persons, and that is, when a man is arrested, and he himselfe, or another in his behalfe, doth rescue him.

The other relates to things, and of that we now treat, as having affinity to that of [*Parco Fracto*] immediately before spoken of.

This is a Writ lying, where one, or his servant doth distraine for Rent services, or Damage-feasant, or for any other cause, and being about to impound the distresse, another taketh it away from him, and will not suffer him to impound it; in this case the Party hurt or grieved may have this Writ for his relieſe against him that made the rescue, and shall recover damages for it.

Where a man distrains Cattell, and in driving

them to the Pound, they get into the Owners Houſe and he doth withold them from the diſtraining, and he will not ſuffer him to drive them to the Pound, this is a Reſcous for which the Action lies.

If a man be comming to diſtrain, and the Owner drive away the Cattell, and he that is about to diſtrain doth follow them upon a freſh purſuit, and the Party will not let him have them, but drive them away, in this caſe he may havet his Writ as his remedy.

But if before one be come in ſight, the Owner drive out the Cattell, or they go out themſelves, ſo that he miſſeth of that Diſtreſs he intended, this Writ will not lie for this.

If the Lord diſtrain his very Tenant without cauſe and unjuſtly, and it be reſcued, it ſeemes this Action doth lie.

Note that if any other but the Lord do diſtrain upon his Tenant without cauſe, or out of time and place in any of the Caſes before recited this Action will not lie.

The Proceſſes in this action are as follows.

The firſt is a Summons, and then Attachment and Diſtringas, *and then* Alias *and* Pluries Diſtringas.

The Writ of Summons is thus,

THe Keepers, *&c.* To the Sheriff of *L. &c.* If *A.* ſhall cauſe thee, *&c.* Then put, *&c.* To ſhew wherefore, whereas he the ſaid *A.* in his Damage of S, certain Cattell (or thus) The Cattell of the aforeſaid *B.* he took, and them according to the Law and Cuſtome of the Common wealth of *England*, would have there impounded, The aforeſaid *B.* the aforeſaid Cattell by Force and Armes he did reſcue, *&c.* And other harmes, *&c.*

If for ſervices due, as follows.

He Keepers, *&c.* to the Sheriff, *&c.* if *A.* ſhall cauſe thee, then put, *&c.* to ſhew wherefore where- he the ſaid *A.* in his Fee at S. for Cuſtomes d Services to him due by *C.* his Servant, certaine attell, he cauſed to be taken and them according to e Law, and Cuſtome of the Common wealth of *ngland.* &c.

Note where a man diſtrains beaſts, and dead Chat- ls, there the VVrit is thus:

To Shew wherefore, whereas he the ſaid *A.* in his e at S. for Cuſtomes and Services to him due, the attell and Chattels of him the ſaid *B.* he tooke, and oſe Cattell he would have impounded, and the a- reſaid Chattels in the name of diſtreſſe, according the Law and Cuſtome of the Common-wealth of *ngland,* he would have detained, he the ſaid *B.* the me Cattell did Reſcue, and the Chattels aforeſaid om him the ſaid *A.* he tooke, and other Harmes, *r.*

If the party appeare not upon the Summons, then before you are to proceed to Attachment and Di- reſſe infinite.

In caſe he appeare, you may declare as fol- ws.

Yorke ſs.

W. C. lately of *B.* in the County of *E.* Yeoman, and *W. B.* lately of *B.* in the County afore- id, were attached to anſwer *I. C.* Knight, of a Plea, at whereas he the ſaid *I.* in his Fee at *B.* for Cu- oms and ſervices to him due, by *N. T.* his Servant, d cauſed to be taken certain cattell, & the ſame cat- ll, according to the Law and Cuſtome of the Com-

mon-wealth of *England*, would have impounded, there the ſaid *W.* and *W.* the ſame Cattell by force and Armes did reſcue, and other Enormities to him there offered, to the great damage of him the ſaid *I.* and againſt the publick peace, *&c.* And whereupon the ſaid *I.* by *I. W.* his Attorny, complaines that whereas he (ſuch a day and yeare) in his Fee at *B.* that is to ſay, in one hundred of acres of Lands, called *W.* parcell of the Mannor of *B.* with the appurtenances in the County aforeſaid, which *T. B.* then held of him the ſaid I. as of his Mannor of *B.* in the County aforeſaid, by Homage, Fealty, and unto Eſcuage of our Lord the King, of forty ſhillings, when it ſhall happen 2*l.* and unto more, *&c.* And unto leſs leſs, *&c.* and by the Rent of five and twenty ſhillings, each yeare; at the Feaſt of Saint *Michael* the Arch-Angel to be payd, as alſo by the ſervice of doing ſuit to his Court of Wapentage of *H.* in the County aforeſaid, from three weekes to three weekes, at the Wapentage aforeſaid to be held, & by the Sheriffgild of five ſhillings every yeare at the ſame Feaſt of St. *Michael* the Arch-Angel yearely to be payd, of which ſaid ſervices the ſaid *I.* was ſeized by the hands of the aforeſaid *T.* as by the hands of the true Tenant, That is to ſay, of the Homage, Fealty, and Suit of Court aforeſaid, as of his Fee and right, and of the Eſcuage and Rent aforeſaid in his demeſne as of Fee; and being ſo ſeiſed by the aforeſaid *N. T.* his Servant, did cauſe to be taken certain Cattell, that is to ſay, two Cowes feeding upon the aforeſaid hundred Acres of Land for the Rent, Cuſtomes and Services, to him due and unperformed, that is to ſay, for the Homage, and Fealty, and for the Rent, of five and twenty ſhillings, for one whole yeare, ended at the Feaſt of St. *Michael* the Arch-Angell (ſuch a yeare) being in arreare, as alſo

ſo for the Suit of the aforeſaid Court of *Wapentage*, held at H. aforeſaid (ſuch a day and yeare) undone and the ſame N. the ſame cattell accordiug to the Law and Cuſtome of the Common wealth of *England* there would have impounded, they the ſayd *W.* and *W.* the aforeſayd Cattell the day and year aforeſaid, at E. aforeſaid by force of Arms, that is to ſay, with Swords, Staves and Knives, they did reſcue, and other harmes, *&c.* And againſt the Peace, *&c.* Whereupon he ſayes that he is worſted, and hath damage to the value of forty pounds, and thereupon he brings his Suit, *&c.*

AND the aforeſaid *W.* and *W.* by *H. D.* their Attorney comes and defends the force and injury, when, *&c.* and the aforeſaid *W.* ſayes that he is in no wiſe guilty of the treſpaſs and reſcue aforeſaid, as aforeſaid *I. C.* hath above declared againſt him, and of this he puts himſelf upon the country, & the aforeſaid *I. C.* in like manner, and the ſaid *W. B.* as to the coming by force and armes, ſayes, that he is in no wiſe thereof guilty, and upon this he puts himſelfe upon the Country, and the aforeſaid *I. C.* in like manner. And as to the reſidue of the treſpaſs, & reſcue aforeſaid above ſuppoſed to be done, the ſaid *W. B.* ſayes that the aforeſaid *I. C.* ought not to have againſt him his aforeſaid Action, becauſe he ſayes, that the aforeſaid T. B. held not of the aforeſaid, I. C. the aforeſaid hundred acres of Land, as of his Mannor of B. aforeſaid by the ſervices aforeſaid, as the aforeſaid I. C by his Declaration aforeſaid hath above ſuppoſed, and of this he puts himſelf upon the Country, and the aforeſaid I. C. in like manner, therefore as well to the trying this iſſue, as iſſues above joyned, command is given to the Sherif that he cauſe to come here 15 dayes after Eaſter 12. *&c.* by whom, *&c.* And who neither

ther, *&c.* to recognize, *&c.* Becauſe as well, *&c.*

HEre you have a Declaration againſt two, and the one pleadeth generally not guilty, the other not guilty as to force and arms, and as to the reſidue he pleads *Non Tenure*, upon which you have an Iſſue joyned in the cauſe, where if you were to deſcend to triall in any of the like nature, your courſe of proceedings muſt be as is formerly directed in other Actions.

In this Action you recover damages and coſts only.

Aſſize comes now to be treated of, an Action which formerly was much in uſe, and although for the preſent not ſo much in practice, yet to preſerve the knowledge of it, we ſhall here diſcover ſomewhat of the nature of the action, together with the proceedings thereupon:

ASSIZE is a Writ, and it lieth, where a man is put out of his Lands, Tenements, or of any profits to be taken in a certain place, as of an Office, *&c.* and ſo diſſeiſed of his Free-hold, (which Free hold to any man is where he is ſeiſed of Lands or Tenements, or profits to be taken in Fee ſimple, Fee-taile for tearm of his own life, or for Tearme of another mans life) but Tenant by *Elegit*, Tenant by Statute Merchant, Tenant by Statute Staple, may have Aſſize, although they have not Free-hold, and this directed by divers Statutes.

IN an Aſſize it is alwayes needfull that there be a Diſſeiſor and a Tenant, or otherwiſe the Writ ſhall abate.

Alſo where a man is diſſeiſed, and recovereth by an Aſſize of Novell diſſeiſin, and afterwards is againe diſſeiſed by the ſame Diſſeiſor, he ſhall have againſt him a Writ of Re diſſeiſin directed to the Sheriff to make

ake inquiſition, and if the Re-diſſeiſin be found, he hall be ſent to priſon. Alſo if one recover by an ſſize of Mortdanceſter, or by other Jury, or default r by reddition, and if he be another time diſſeiſed, hen he ſhall have a VVrit, *De poſt diſſeiſin*, and he hich is taken and impriſoned for re diſſeiſin, ſhall ot be delivered without ſpeciall commandment of he King, See the Statutes thereof, *Merton*, Chapter he 3 *Morlebridge*, Chapter the 8. and *Weſtminſter*, Chapter the 26.

There is alſo another Aſſize called an Aſſize of reſh Force, and lyeth where a man is diſſeiſed of enements, which are deviſable as in the City of *ondon*, or other Burroughs or Townes that be Franhiſes, then the Plaintif ſhall come into the Court of he ſaid Town, and enter his plaint, and ſhall have a rit directed to the Major or Bayliffs, and thereupon hall paſſe a Jury in the manner of Aſſize of Novell Diſſeiſin; but it behoveth that he do enter his Plaint ithin forty dayes, as it is ſaid, or otherwiſe he hall be ſent to the Common Law, and if the Officers elay the Execution, then the Plaintiff ſhall have nother VVrit to have Execution, and a *Sicut alias*, nd a *Plures*.

This Aſſize branches it ſelf further into an 1. Aſize of *Darreyn* preſentment, of which we have before poken of.

2. Aſſize *de Mortdanceſter*.

An Aſſize of *Mortdanceſter* ſhall be brought in like manner, as an Aſſize of Novell diſſeizin ſhall be, nd in Aſſize of Novell diſſeizin before the Iuſties of the Common Bench, or of the Upper Bench, a certaine day ſhall be put in there as unto Thurſday fter fifteen dayes after Eaſter, *&c.* But in an Aſſize f *Mortdanceſter*, a common day ſhall be given, and fifteen dayes, *&c.* or in eight dayes, *&c.*

IN

IN an Assize of novell disseizin in the Common Bench or in the upper Bench, the Justices may give a day of Tearme, so unto Thursday next after such a Feast, &c. for that an Assize hath not any day of a day of returne the Tearm, but a certaine day which the Justices will give him, and this may be as well out of the Tearm as in the Tearm, and that by the Statute of Articuli super chartas *which directs that in every Writ of Summons and Attachment, there ought to be fifteen dayes between the date and the returne of it: But in an Assize of Novell Disseizin in the Common Bench, or in the Upper Bench there needs not to bee had fifteen dayes between the date and the returne of it, as it seems by the Statute.*

IN an Assize of novel disseisin *sued before Justices in Eyre, or before Justices of the upper Bench or of the Common Bench, the Plaintiff need not to have any Patent to the Justices, for they have authority without Patent, and so have the Justices of Assize authority to take Assize of* Novel disseizin *without any patent made unto them, and that by the Statute of* VVestminster, *the* 13.

If the Assize be brought in the upper Bench, or in the Common Bench, then the Writ runs thus.

THE Keepers, *&c.* To the Sherif, *&c.* Complaint is made to us by A. that B. unjustly and without Iudgement, hath disseized him of his Freehold in C. after, *&c.* And therefore we command thee, that if the said A. shall secure thee prosecuting his Complaint, then thon causest that Tenement to be reseized of the Cattel, which in it were taken, that the Tenement with the Cattell to bee

eace untill Saturday, in eight dayes after Saint
ichael, or unto Saturday next after the Morrow
All-Soules next comming, *&c.* And in the meane
me then cauſe twelve free and lawfull men of that
iſenage to ſee that Tenement, and imbreviate their
ames, and ſo ſummon them by good Summoners,
at they be before us at *Weſtminſter* (if in the upper
ench) or before out Juſtices at *Weſtminſter*, (if in the
ommon Bench) at the aforeſaid time ready to make
ecognitition, and put by Sureties, and ſure pledges,
e aforeſaid *B.* or his Baile, if he cannot be found, that
be there to hear that Recognition; and that thou
ve there the Summoner, the names of the Pledges
d this Writ.

If the VVrit be brought before the Juſtices of Aſſize,
en the alteration is thus.

The VVrit is all one with the former, till after the
rd (Peace) and then you ſay untill the next Aſ-
es, when our Juſtices ſhall come into thoſe
rts.

If the VVrit of Aſſize be brought before other Ju-
ces then the Juſtices of Aſſize in the ſame County,
en the Writ is as above, nntill you come to the word
eace) and then you ſay nntill a certaine day, which
r beloved and faithfull *R.* and *F.* ſhall make known
to you, *&c.* And in the mean time, *&c.* That thou
mmon them before the aforeſaid *R. F.* and thoſe
om we have aſſociated unto them, at a certaine
ce which the ſaid *R.* and *F.* ſhall make known un-
thee, ready thereupon to make recognition, *&c.*
d put, *&c.*

lpon this VVrit there ought to be a ſpeciall Patent
exted to the ſame Juſtices, for that they are not Ju-
ces of Aſſize for that County.

If a man have Rent-ſervice, Rent-charge, or a
nt-ſeek, iſſuing out of Land for terme of life, or

in

in Fee-taile, or Fee-ſimple, if he be diſſeized of this Rent, he ſhall have a Writ of Aſſize of this Rent, and the VVrit ſhall be generall. That unjuſtly, *&c.* he did diſſeize him of his Free-hold in *N.* and he ſhall make his Title to the Rent, *&c.* VVhen hee declares, *&c.*

A man may have an Aſſize of divers Rents, or of Land and Rent and Offices, and Proffits, to be taken in a mans Soile, and all in one VVrit.

If a man have any profit granted unto him out of any Land for term or life, or in Fee, as to have the Fruits, whether Aples, Pears, Nuts or Achorns, or other profit whatſoever, he may have an Aſſize of them, if he deforced of them.

So likewiſe of a Toll of a Market, of a Paſſage or Ferry, of *Pontage* or *Pannage*, and other like things, he may have this VVrit of Aſſize.

What Seizin is ſufficient to have an Aſſize.

SEiſin of parcell of the Rent is ſufficient to have Aſſize of all the Rent.

The Provoſt or Warden of a Colledge ſhall have an Aſſize for Rent, where his Predeceſſor was ſeiſed, and not he himſelfe; for the Seizin of the Predeceſſor is the Seizin of the Houſe. The ſame caſe of the Warden of an Hoſpitall.

If a man which hath a Title to enter, ſet his foot upon the Land, and is outed, that is a ſufficient Seizin to have an Aſſize.

If one put in his beaſts to uſe my Common by my Commandement, that is a ſufficient Seizin for me to have an Aſſize.

Uſing

Uſing of Common by Tenant at will is ſufficient Seizin for him in the Reverſion to have an Aſſize of Common, if he or his Tenant at will be diſturbed.

Reverſion was granted to *J.S.* and the Tenant for life, attornes and dies, and *J.S.* enters by the Windowes (for that he cannot enter by the Door) when one half of his body was in, he was pulled out, and yet that is a ſufficient Seizin to have an Aſſize.

The Proceſſes in this Action are Summons, Attachment, and Diſtreſſe.

Where you are to declare, you may in caſe it be for Common of Paſture, make the inſuing your preſident.

Weſtmerland.

THe Aſſize comes to recognize, whether *T. W.* Knight, unjuſtly and without Judgement, have diſſeized *Henry*, Earle of *Cumberland* of his Common of Paſture in *R.* which pertaines to his Free-hold in *R.* within thirty years now laſt paſt, *&c.* And whereupon the ſaid Earle by *H.D.* his Attorney complains, that the aforeſaid *T. W.* hath diſſeized him of his Common of Paſture, to wit, for coming every yeare all times of the year, in five hundred Acres of Paſture with the Appurtenances in *R.* aforeſaid, with all Horſes, Oxen, Cows, Sheep, and Swine, and other Cattell in his Mannor of *R.* in the County of *W* Levant and Couchant, which pertain to his Free-hold in *R.* that is to ſay, to his Mannor aforeſaid.

And for the title of the common paſture aforeſaid, and the Aſſize aforeſaid thereupon to be had, the ſaid Earle ſaith, that one *H.* lately Earle of *Cumberland*, and Father of him the ſaid now Earle, whoſe Heir he is, was ſeized of the Mannor aforeſaid with the appurtenances in his Demeſne as of Fee, and

that

that he the ſaid late Earle, and all they whoſe Eſtat the ſaid late Earle in that Mannor with the appurte nances had for the time, whereof the contrary is no extant to the memory of man, have had and have bee accuſtomed to uſe, and have for themſelves, and thei Tenants for Tearm of life, yeares, or at will, o their Mannor aforeſaid, and of every parcell there common of Paſture, with all manner of Cattell afore ſaid in the Mannor aforeſaid, Levant and Couchan every yeare, all times of the yeare, on the aforeſaid fiv hundred acres of Paſture, as unto the Mannor afore ſaid pertaining.

And he the ſaid late Earle of the Mannor aforeſaid, with the appurtenances, being ſo ſeiſed of ſuch hi Eſtate, he died thereof ſeized, after whoſe death the Mannor aforeſaid with the appurtenances, did deſcend to him the ſaid now Earle as to the Son and Heire of the ſaid late Earl, by which he the ſaid now Earle into the Mannor aforeſaid with the appurte nances did enter, and was, and yet is thereof ſeiſed in his Demeſne as of Fee. And being ſo thereof ſei zed, he the ſaid now Earle before the day of the iſſuing forth of the originall Writ of Aſſize aforeſaid put his Cattell, that is to ſay two Oxen and two Hor ſes, into the aforeſaid Mannor, Levant and Couchant, on the aforeſaid five hundred acres of paſture to feed upon the Graſſe there then growing, uſing thereby his common, aforeſaid, and the ſaid Cattell were eating the Graſſe there then growing, until the aforeſaid *T. w.* before the day of the iſſuing forth of the aforeſaid Writ, him the ſaid now Earle of his Common of Paſture aforeſaid, unjuſtly and without judgement he did diſſeize, as he above againſt him hath complained: And this he is able to aver, and thereupon he demands the Aſſize,

And

And the aforeſaid *T.W.* by *J. P.* his Attorney, comes and ſaith, that he hath done no injury or diſſeizin to the aforeſaid now Earle, of the Common of Paſture aforeſaid, in the aforeſaid five hundred Acres of Paſture in view, *&c.* put, and in the plaint aforeſaid ſpecified; and upon this he puts himſelfe upon the Aſſize, and the ſaid now Earle in like manner: Therefore the Aſſize is to be taken thereupon between them.

There are ſeverall Pleas ſpecially to be pleaded in this Action, both in Bar and abatement, which ariſe according to the Tittle on the Defendants part.

A Leaſe for years, or for life, the Reverſion to the Plaintiffe, or a Feofmen of the Plaintiffs, with warranty, and rely upon the warranty, is a good Bar.

The Tenant may plead, that partition was made between the Plaintiff and J. S. whoſe eſtate he hath, and it is a good Bar.

If the Plaintif chooſe one to be his Tenant of all where he is not, the writ ſhall abate.

An Aſſize is brought of Tenements in D. and S. the Tenant ſayes, that all is in S. that being ſo, the Writ ſhall abate, for he cannot abridge the whole Town, but ſee now by the Statute of 23. *Henry* the Eight, Chapter the third, where he may abridge.

The Bayliff may plead *Non tenure*, or Miſnaming of the Plaintiff, but not of his Maſter, and conclude it, *&c.*

The Baylif may plead that the Tenements are in another Town, for that is an Abatement.

The Baylif may plead Miſnaming, and Ioyntenancy without Deed.

A Baylif may plead not attached by fifteene ayes.

After adjournment upon the Plea of the Baylif, the Tenant may plead matter which comes of later time.

The

The Tenant himself, after the Assize awarded, may leave his Bar, and plead the generall Issue, but he cannot plead a new Bar after issue.

If a plea be pleaded, and the Justices dye, all shall be pleaded a new; but if they be at issue, that shall stand.

Where they are adjourned upon a plea in abatement, and after the Writ is awarded good, he may afterwards plead in Bar.

Thus much may suffice to have spoken of Assize.

We should now come to treat of divers other actions, as *Contributione faciendâ*, *Quid Juris clamat*, *Per quæ servitia*, *Et per quem reddit*; and divers others of those natures, and finding them to be very obsolete, and out of use, and that the Law hath provided remedies, by the foregoing actions in most of those cases, and that the proceedings thereupon (chiefly for the trying of titles) are far more expeditious, and more certain, and with lesse trouble and danger to the Client; I think it will not be time ill spent to insert some brief Rules, both in *Ejectione firmæ*, and some other actions before spoken of, which were then omitted, and hope though they come not in the direct places of those titles, will be very usefull for the Attorney.

These proceedings are referred to the title foregoing, of this Subject, Fol. 199.

OF the processe in this Action we have before spoken, & of the pleadings & proceedings upon it: but because many of them miscarry, by reason that the proceedings before processe, relating to the Lessors Entry, the making of the Lease, the entry of the Lessee, by virtue of the Lease, the Ejec-

tors

ors Entry upon him, and his Outer and Ejectment, where care is not taken, and they be not circumspect to prevent a defect in any of these, it causes much danger and prejudice to the Client, and causes, no little disgrace to the Attorney. In this Action so very usefull we shall speak to these things in order.

1. The Entry of the Lessor that hath the right.
2. The lease made by him for triall of the Title.
3. The Entry of the Lessee, by vertue of the lease so made.
4. The Entry upon him, and his Ouster and Ejectment.

FIrst it is to be considered what right or title the Lessor hath to enter, whether he hath any right or title to the Land or no; for if the right and title appeare on the Defendants part, the Plaintiffs Action will faile.

Now a man may have a Right or Title to that Land whereof he hath no possession nor property; as where land is taken from a man wrongfully by disseizin, in this case the Challenge and Claime of him from whom it is taken, is called a right. There is a right of Action, which is, where there is no remedy left, but an action to recover the Land; & there is a right of Entry, when the party claiming, may for his relief either, enter into the land, or have an Action to recover it.

There is a Title of Entry, which is where no wrong ir done, and yet one who hath a lawful course to enter upon the land which anohter hath, but hath no Action to recover it; as where Entry is given to a man, for a Condition broken upon an Escheat, the Tenant dying without Heir.

In all which cases he must make his Entry before he can bring his Action.

1. The Property and Title of Land is made, and may be gained severall wayes.

Either by Entry, as in case of occupation, where Land is granted to *I.S.* for another mans life, and *I.S.* dye; in this case he that first gets into possession shall have the Estate.

2. By discent, where one hath Land of Inheritance, and dieth, not disposing of it.

3. By Escheat, where the owner dyeth seized without any Heire, which may be in case he have only a Bastard, or because he is attained of Treason or Felony.

4. By conveyance, and so the property of Land is transferred, and so it is passed ten manner of ways as follow.

Fine, Recovery, Feoffment, Grant, Lease, Bargain and Sale, Exchange, Surrender, Release, Confirmation.

A man may have property in Land also by an Execution, as by Elegit or Extent.

If he ever had a right of Entry into the Land, it must be considered whether it doth continue and is not taken away, for one may have a right of Action and no right of Entry to recover his Land; and he that will maintain this Action, must make himself a Title under the Lessor, that had a right of Entry into the Land when he made the Lease; for he that makes the Lease must have power and right of Entry, at the time of the Lease made, otherwise neither the Entry nor the Lease will be good.

Now that the Entry may be good and warrantable by the Lessor, for otherwise the Action is not maintainable, take these Rules following.

1. This Entry is to be made by the party that hath right.

2.

2. It is a purpoſed going into, or ſetting his foot upon the Land, as upon his own Land.

3. This may be done by the Party himſelfe that hath right to enter, or by his Attorney, by a warrant from him, or by another to his uſe; and if it be done by Attorny, he muſt have a good Authority, and ſee he do duly purſue it.

Note that one Joynt-Tenant, Tenant in Common, or Coparcener, having right to enter, may if he will, enter for all the reſt.

If ſuch a perſon enter generally, or for, or in the name of himſelfe and the reſt; and the reſt do not afterwards diſagree to it, this is a good entry for himſelfe and the reſt; and therefore if one have Iſſue, a Son and a Daughter by one Venter, and a Son by another, and being ſeized of Copy-hold Land, deviſe all to the younger Son, and die, and he enter into all, this Entry, ſhall availe the eldeſt Son, to put him in Poſſeſſion of the third part.

The enty into one part may be ſufficient to gaine the poſſeſſion of the reſt of the Land.

The Entry into parts muſt be in the name of all, *&c.*

If one reſtrain his own Entry, and make it ſpeciall, and ſay, that it ſhall be to ſuch an acre onely whereon he put his foot; in this caſe it reduceth the Poſſeſſion of no more but that part, *&c.*

If a Leaſe be made to *A.* and delivered to *B.* to the uſe of *A.* and *B.* enter to the uſe of *A.* and after is outed, *A.* may have this Action upon the Entry:

Having done with Entry, we come now to ſpeak of Leaſes; for it is abſolutely requiſite for the maintaining of this Action, that a good and warrantable leaſe be ſhewed forth.

For the better inabling of you to make ſuch Leaſe, take theſe Rules following.

1. The Leaſe to try the Title muſt be well made, ſealed, and delivered, as other Leaſes and Deeds are done; and for that ſee the Book of Common aſſurance, Chapter the fourth and fourteenth: A book very uſefull for many Conveyances, both in this and other kindes.

2. The Leaſe and Entry may be made by the Party Leſſor himſelf, if he be of full age, and not a femme Covert, or by his Attorney, by a Letter of Attorney, wherein the Leſſor may ſeal and ſigne the Leaſe, and ſeale and deliver the Letter of Attorney at one and the ſame time, to ſome Friend of his; and in this Letter of Attorney he muſt recite the Leaſe, and give the Attorney power to enter into the Land, and there to deliver the Leaſe of the Leſſee as his Deed, and then the Attorny muſt do it in ſuch ſort, as the Leſſor himſelfe ought to do it; and he muſt not deliver it till he come to the Land.

3. The Leaſe muſt be delivered upon the Land, for if the Leſſor ſeal and deiver the Leaſe, before he hath made his entry upon the Land, it is voyd.

The Husband and Wife may make a Leaſe and Letter of Attorney, to enter and deliver it upon the Land, and this is good.

A Woman covert, or an Infant, cannot make a Letter of Attorney to ſeale a Leaſe, to try a Title as a man of full age may do.

The Husband alone may make a Leaſe of his Wives Lands.

A Copyholder may make a Leaſe to try the Title for a yeare without Licenſe.

A Tenant in common may make a leaſe to try the Title for his part, *&c.* for a year, *&c.*

The uſuall Tract that is uſed in ſealing this leaſe of Ejectment, is as follows.

Where a man hath a Title to a Houſe, Land, or both

both, and desires to gain the possession; it is useful to make a Lease (to some friend who is assured will not deceive his trust, but will surrender up the Lease, &c.) for two or three years or more, for so long as he may be sure the time is not expired, before he get his Tryall and Judgement.

This Lease being made, he goes with such his friend the Lessee, to the Mannor or chief House, or Lands within the door, or to the Land where no House is, where he seales and delivers it to his friend and taking the Ring or any Part of the door in his hand, delivers the Lease, mentioning the House and Lands with the Appurtenances, which are contained in the Lease, to his said friend the lessee.

This being done, and that you go away, whosoever after that staies in the House, or whosover next enters into the House, whether Master, Servant, or Stranger, is an ejector, and is proper to be made Defendant.

In case you find no Ejector, you may, if you so think fit, appoint one to that purpose.

The Lease being sealed and delivered to your friend as before, the Party appointed to be the Ejector may go into the House, and thereby, you going away, he is become Ejector.

Where you thus appoint an Ejector, you must be sure to give notice to the Tenant of the Land, to defend the Title upon the Ejectors appearance.

Where the Tenant of the Land hath but a Lease, he must give notice to the Lord in whom the Fee-simple is, that he may be ready with his Evidences, &c. to defend the Title.

Note that if you cannot come into the House, you may deliver the Lease upon the Lands, in the name of the House and Lands contained in the Lease; and he that comes next after your going away upon the Land, is an Ejector.

Where it cannot be proved that the Leſſee after the Leaſe made, did enter and was poſſeſſed, this Action will not be maintainable, and therefore we muſt now ſay ſomething of the entry of the Leſſee.

1. He muſt make ſuch an Entry as to gain the Poſſeſſion, for he cannot be ejected out of the Poſſeſſion of that wherein by Law he was never in.

2. His Poſſeſſion muſt continue, for if upon Sealing of the Leale, and the delivery of it to the Leſſee upon the Premiſſes, the Leſſor leave him upon the Houſe or Land, and that he be outed, or come away &c. and another enter; whether it be a continuance of the ſame Tenant in Poſſeſſion, or the entry of a Stranger; here his Poſſeſſion is diſcontinued, and any of thoſe parties are Ejectors. For the ejectors take this.

The entry of a man upon the Land after the Leaſe ſealed, or the putting in the beaſt upon the Land, is the like caſe is an Ejectment.

The continuance of the ſame Tenant in Poſſeſſion, that was in at the time of the ſealing of the Leaſe, is an Ejection, and the Tenant an Ejector.

VVhere a Leaſe is made to try the Title, and the Servants of the former Poſſeſſor enter with the Maſters Carts to do their utmoſt, and the Action brought again the Maſter; it is maintainable without proofe of the Maſters Commandement for the Entry.

In ſome caſes this VVrit lies, and not in others.

It lies of a Mannor Houſe, Land, Meadow, Paſture Tith, or ſuch like things.

It lies of an Orchard: It lieth of a Kitchin, It lies of a Camber: It lieth alſo of a Coal-Mine: It lies alſo of a Bailery.

It lieth not upon a Leaſe of a Stock of Catt[le]

nor upon a Leaſe of a Sum of Money, nor of a wa-ter-courſe.

The writ muſt ſet forth the certainty of the thing both for quantity and quality, as ſo many Meſſuages, ſo many Cottages, ſo many Acres of Land, ſo many Acres of Meadow, ſo many Acres of Paſture, *&c.*

Thus much for *Ejectione firmæ*, before omitted.

In Actions of Account take theſe Obſervations following.

NOw where a Baylif doth make a Deputy, yet the Writ muſt be againſt the Baylif himſelf.

If a Stranger take the Profit of my VVives Land during Marriage, and I dye; my Executor, and not my VVife ſhall have this Action.

This Action lies againſt the Husband for the receit of his wife; and againſt the wife and Husband for the receit of the wife, whilſt ſhe was ſole.

It lies againſt a Body politike, as againſt a ſingle man.

It lies againſt the Keeper of a Park, that hath the charge of Deer, as Baylif of his Park, *&c.*

An Action of Account lies not in theſe caſes following.

1. VVhere the party to be ſued claimeth the thing to his own uſe.

2. VVhere there is no privity between the parties, neither *Ex proviſione Legis*, called privity in Law, as in the caſe of a Guardian, nor in Deed by the conſent of the Party; as when goods are delivered to a Stranger, and not to my uſe, nor to be delivered over to more, there is no agreement between the parties.

3. VVhere he that hath delivered the things, hath taken an Obligation for ſecurity of the things delivered.

4. Where the party that hath the things, hath a bare v erſight of them, as a Bailiff of a plow, a Shepheard of Sheep, *&c.*

A Bailiff ſhall have allowance upon his Account, but a Receiver ſhall have none.

If the Bailiff diſburſe any thing for his Maſter belonging to his Office, as to pay his quit Rent, or the like; or if he be robbed, or ſuffer loſs by other means without any default in him, it ſhall be allowed him upon his account: But if he pay his Maſters debts, or lay out any thing elſe not appartaining to his Office, this will not be allowed him.

There are two Judgements upon this Writ, the firſt is (*Quod computet*) which is *Interlocutory*; the laſt is *Quod querens recuperet verſus Defendentem* ſo much as he is fouud in Arrearages, and *Damna occaſione interplacitationis.*

The firſt is to account only, and upon this the Defendant may be outlawed, and then before Outlawry if he appear and enter into account, and be found in Arrearages, the plaintiff ſhall have a definitive Iudgement for the Arrearages, and after the firſt judgment no abatement can be for any cauſe, but a diſcontinuance, or *Non*-ſuit may be.

The firſt Iudgmenr, is but an Award of the Court, like to a Writ of Inquirie of Damages, and not like to a finall Iudgement, for there the Action is clearly determined, and theſe two judgements depend one upon another, for if judgement be to account, and the plaintiff dye before he hath accounted, the Executor cannot go on in that Suit, but he muſt begin again, and no Writ of Error will be upon the firſt, till after the ſecond judgment.

VVe have now gone through the moſt generall and uſefull practice of the Common Bench, relating to the ſeverall Actions before going; as alſo of all Offices

ces, and Officers incident to that Court, and now s before we promised, hereto is added a Table of he Fees of that Court, of all Offices whatsoever re- ating to the Court, or the practice of it, belonging to very Office and Officer, which follow in order.

The fees hereunder mentioned are the fees due, and paid to the Lord chief Justice, and the other Justices of the Court of Common-Pleas at Westminster, as they were due, and usually paid to the Justices of the same Court.

The Lord Chief Justice his Fees.

FOr allowance of a VVrit of Error upon an Outlawry before judgement, 20s.	*Writ of Error.*
For a Bail taken upon an Outlawry upon mean process in debt, if the debt be 20 l. or above, 2 s. 4d.	
For the allowance of a VVrit of Error upon a judgment, 20s.	
For Bail taken in case of a debt, after judgement, 12 s.	
For the allowance of a VVrit of Error upon a Judgment upon a *Scire fac.* and Outlawry after judgment. 35 s.	*Making the Roll.*
For making the Roll that a VVrit of Error is allowed on, 2 s.	
For a *Super sed.* 3 s.	*Super sed.*
For the transcript of a Record, being a press, 6 s. 8. d	*Transcript.*

For every preſſe more, 6s.8d.

Certiorari. For the returne of every *Certiorari*, 14s.9d.

Seal Niſi prius. For the ſeal of every record of *Niſi prius*, 2s.1d.

Sealing of writs, and Exemplifica. Fines For the ſeal of every Writ ſealed in Court, 1d.

For the ſeal of every Exemplification, 2d.

The Fees following are due to ſuch of the Judges who do perform the buſineſſe.

FOr acknowledgement of a Fine or Warrant of Attorney for a common Recovery out of Court, 6s.8d.

Sign writs. For ſigning every Writ of priviledge to remove any cauſe, *Habeas corpus, procedendo*, or *Superſed.* upon a *procedendo*, 4d.

Bailes. For every Baile taken out of Court upon any ſuch Writ of priviledge, wherein one cauſe onely is returned, 9s.8d.

For every cauſe more, 2s.

Confeſſions. For the confeſſion of a Judgement out of Court, 9s.8d.

Bayles. For every Phillizers Bail, & other Bail taken out of Court, 9s.8d.

Satisfaction. For acknowledging ſatisfaction out of Court, 9s.8d.

Deeds acknow. For acknowledging out of Court a Deed to be inrolled, 9s.8d.

Guardians. For admiſſion of a Guardian out of Court. 9s.8d.

Suggeſtion. For the proof of a ſuggeſtion out of Court

Court, for every witneſs, 9 s. 8 d.

For a Warrant for paſſing of a Fine, where there are more then three Cognizors, or three Cognizees, parties to the Fine, 4 s. *Warrant for fines.*

For every Affidavit taken out of Court upon a forraign Plea, or Reſcous, 2 s. *Affidavit.*

For any other Affidavit taken out of Court, 8 d.

For exhibiting of any Information out of Court, 8 d. *Informations.*

For ſigning a Bill of coſts to award an Attachment for not appearing upon a *Sub pœna*, 8 d.

For granting a licenſe to compound upon a penall Law, 2 s.

For aſſeſsing of the Kings part of a forfeiture upon a penall Statute after compoſition with the Informer, 2 s.

For the committment out of Court of a Priſoner to the Fleet, chargedwith one cauſe only, 9 s. 8 d. *Commitments.*

For every Baile taken out of Court upon an Outlary in debt upon meane proceſs reverſed, if the ſame be twenty pounds, 2 s. 4 d. *Bailes in Outlaries.*

Dividend

Divident Fees.

Fees in Court to the Box.

These Fees following are due to the Lord chief Justice, and the other Judges of the Court of common Pleas, by way of Divident.

Judgements. For confessing of a judgement in Court, 6 d.

Satisfaction. For acknowledging satisfaction in Court, if the Debt or Damage do not amount unto 100 l. 6 d.

If the Debt or damage do amount to 100 l. 12 d. and for every 100 l. after the same rate, 12 d.

Guardian. For admitting an Infant in Court to his Guardian, 12 d.

Vlt. For reversing an Outlary in Court for Error in the Exigent, or Retourn, 12 d.

For the like for the insufficiency of the Proclamation or Retourn, or for want of a Proclamation, 2 s.

Recoveries. For every common recovery acknowledged in Court, 6 d.

Fines. For a Fine acknowledged in Court, 6 d.

Bailies. For a Bail taken in Court, or a Bail

Recognizance. or recognizance acknowledged in court, 12 d.

Deeds. For a Deed acknowledged in court to be inrolled, 12 d.

Discontinuance. For a Discontinuance, 12 d.

Prohibition. For a prohibition granted, 9 s. 8 d.

For

For every wager of Law, or nonsuit upon a wager of Law, 6 d. *Wagers of Law*

For admission of an Attorny to be a Attorny of this Court, 20 s. *Return sworne.*

The Puisne Judges Fees.

For every Fine drawn at Bar, 12 d. *Fines.*

For a Recovery drawn at the Bar with a single voucher, 18 d. *Recoveries.*

For every voucher more, 6 d. *Reversalls.*

For Reversall of an outlary in court 4 s.

For taking a privy verdict, 6 s. 8 d. *Privy verdict.*

For taking of costs upon every verdict, 12 d *Costes taxed.*

From the Clark of the Warrants every Terme, to every of the puisne Judges, 33 s. *Feod anuale. Clericus warr.*

For every Attorny whose name is recorded in the Roll of Attornies every Terme, 4 d. *Ret. Atou.*

For inrolling and examining the parts of a Fine, and VVrits upon common Recoveries by the Statute, 23. *E.* 6 s. *Inrolling fines and receveries.*

For the exemplification and examination of the parts of a Fine, and VVrits upon common Recoveries by that Statute, 5 s. *Exemplificati on therof.*

For drawing and entring a Rule for and amendment upon that Stat. 12 d. *Rules for amendments.*

For a search made upon the inrolment upon that Stat. 4 d. *Searches.*

For a copy of a Fine, or VVrits inrolled *Copies.*

rolled upon common Recoveries in
led by that Sat. for every sheet, 4

Return of writs of Covenant & entries. For the return of every Writ of C
venant brought to levy a fine up
10

For the return of every Writ of e
try to suffer a common recovery, eve
VVrit of Summons and Seizin ther
upon, 10

Signing Dedimus potestatem. An ancient Fee of 6 s. 8 d. for signi
of a *Dedimus potestatem*, due to t
Judges of any Court who do asign
same which is now, and of late h
been divided amongst all the Jud
that ride the circuits.

These fees following are due to the Cla of the Lord Chief Justice, and other Justices of the said Court.

Fines. TO the Judges Clark of the Fin
For taking of a Fine, or warrant
of Attorny, 3 s. 4

Warrants of Attornies. For certifying of a Fine, or retur
of a *Dedimus potestatem*, 16

Bayls. To the Iudges Clark of Bailes,
taking every baile, 12

Caveat. For entring every caveat to give n
tice that good bail may be taken, 12

Satisfaction. For satisfaction acknowledged out
Court, 12

Deeds acknowledged. For a Deed acknowledged out
Court to be inrolled, 12

Suggestion. For the proof of a suggestion out
Court for every witness, 12

Affidavits. For an affidavit taken out of Cou
4 d. F

Information.

For entring into his book an Information exhibited out of Court, 4 d.

For entring into his Book of Costs Warrant signed to award an attachment for not appearing upon a *Subpœna*, 4.d.

Guardian.

For Admission to a Guardian, 12d.

Licences.

For entring into his book a License to compound upon a penall Law, 4d.

For entring into his book the Kings part of the forfeiture upon a penal law assessed by the Iudges, after composition with the Informer. 6d.

Commitment.

For entring into a book a commitment out of Court of a prisoner to the Fleet, charged with one cause onely, 12.d.

Inrolments. Fines and Recoveries, &c.

To the puisne Iudges Clark of the Inrolments, for copying, inrowling, and examining the parts of a fine and Writs upon a Recovery, by the statute, 23. *Eliz.* 8 s.4d.

For a search made for an Inrolment upon that Stat. 8 d.

For writing a fine, or writs inrolled upon a common Recovery inrolled by that Stat. 8d.

The Custos brevium, who is prime and first Officer of Court, his Fees.

These Fees following are the which are taken by the Cu Brevium, of his Majesties C of Common Pleas, & his Cl in right of his said Office, an they were taken 11. El. *by then Master of the said office, his Clarks.*

Pt. diem. IMprimis, for filing any VVrit, o ther Record, coming after the da the return thereof, except VVri priviledge *de venitendo, & redeunda* also Writs of priviledge, called *Pr post diem,*

Pt. Term. *Item*, For filing any Writ, or o Record (except before excepted) c ing after the Terme wherein it returnable, called a *post Term.*

Item, For fili g any Writ, or o Record coming after two Terms, led *post Termin.* for every Terme 30 d. a piece; except Exigents, Outlawries, which pay but only 2

Item, To the Clark of the s Office (*ab antiquo*) who enters same.

Item, Upon the making of the S 4 *H* 7. *cap* 24. the *Custos Brevium* allo

lowed bythe Court, for carrying and
-carrying of every Fine levyed ac-
rding to that Statute, to *Weſtminſt.* to
e Chirographer to proclame foure
ermes, 8 d.

Item, For keeping three parts of
e Record of every Fine, conſiſting of
ve parts, 4 d. a piece, 12 d.

In tot, For every Fine 3 s. 6 d. where-
the Maſter hath 2 s. 6 d. and 14 d
allowed to the Clarks. 3 s. 8 d.

Item, For the amendment of every *Amendments.*
rit or other Record *per warrant cur.*
20 d.

Item, For every *Non eſt factum* plea- *Non eſt factum*
d in Court, 2 s.

Item, For every Sheriffes bundle of *Sheriffs bundle.*
rits returnable of the precedent
erme, and coming before Eſſoine
y of the ſecond retourne of the new
erme, 8 d

The uſuall Fees allowed by the Cuſtos
Brevium *to the Clerks of his Office.*

Searches.

Nprimis, For every Temple ſearech,
4 d.

Item, Out of every *Weſtminſt.* ſearch,
2 s. 1 d.

Item, To the Clarks out of the al- *Certiora.*
lwance of every *Certiorari* 2 s. 8 d. and
or certifying the ſame, *ſecundum lox-*
itudinem, and according to reaſon,
2 s. 8 d. *ſi Exemplifixi.*

Item, To the Clark for writing and
examining of every Exemplification;

Porta.bre. in cur.

secundum longitudinem.

Item, To the Clark for any VVrit, or other Record carryed into the Court 4d

Bre.de Ingrun. & seia.

Item, For entring a common Recovery VVrit *super disseisinem in le post*, 8d

Fines.

Item, for every Fine passing in the Office, 14d

Ne recipiatur.

Item, For entring into a Book every *Recipiatur* coming under a Iudges hand or by order of Court, 12d

Nota Jur.

Item, For every note of *Jurors* names for the Clark of the Iuries to make further Process by, 4d

Copia exsa.

Item, For every Note of an Exigent for the Clark of the Outlawries to make further process by, 8d

Searches.

Item, For the search of any Book of Entries of any writs for every Term 8d

Copies.

Item, For the Copy of any writ or other Record, for every sheet, 8d

The usuall Fees allowed by the Custos Brevium, *to the Bag-bearer of the Office, being alwayes the Common Voucher of the Court.*

Searches.

IN primis, For every search under five years, 1d

Item, For every Temple search, 5d

For every *Westm.* search, 12.d

Porta.bre.in cur.

For any VVrit or other Record carried into the Court, 5d

Recupat.

For every common Recovery suffered in Court (being the common Vouchee)

chee 5 d a peece, 4 d

For every Attorney ſworn in Court, *Atorn. Jur.* 6 d.

The Fees of the Clark of the inrolements, of warants, and Eſtreats, in the common Pleas, as are now and have been taken theſe two and thirty yeers, and as I conceive where taken ever ſince 21. Eliz. *ſaving the Fees hereafter mentioned, allowed per ordin. Cur.*

EVery Inrolement containing a ſide of a Roll, 5 s *Inrolements*

For a full Roll, 10 s

And ſo according to the rate.

Every Warrant of Attorney *in debt transgr. & detinue* 4 d *War. Attorn.*

The Sheriffs warrants, 12 d

Every other warrant, called double warrants, 8 d

For a *Poſt Termin.* 4 d

The Lord Mayor of *London* his warrant 5 s 8 d

The Secondaries of the Compters in Eaſter Term yeerly, 13 s 4 d

For entring of an Attornies name in the Roll of Attornies, upon his firſt admittance, 3 s 4 d *Attorn. Iur.*

For a warrant upon a writ of Covenant, *per ordin. Cur.* 4 d *War. ſur. fine.*

Paid to the Clark by every Attorney 4 d a Terme, called the Roll groat, which is paid to the Judges Box, and I conceive it to be due ever ſince *Rot. Attorn.*

11 *Eliz.* 4 d

Recuperat. Paid also to the Clerke by the Prothonotaries 12 d, upon every Recovery which is also paid to the Iudges, 12 d

Attorn. Jur. To the Clark when an Attorney is first sworn. 12 d

The Chirographers Fees.

Fines. IN *primis* the ancient Fee limited by Stat. 11. *Eliz.* for every Fine, 4 s

Item, From 4 H. 7. for the service in proclaming Fines, 8 d

Item By Stat. 23. *Eliz.* for writing the Roll, 4 d

So the Chirographers fee for every Fine is, 5 s

Other Fees also due, and anciently paid to the Chirographer, videlicet.

Exemplificat. FOr exemplifying a Fine the Term in which it was ingrossed 2 s 8 d

Copie. For every sheet of every Fine, of twelve lines copied out of the Record, 12 d

For the sight of every Record being ancient, from H. 8. upwards, 3 s 4 d

Searches. For the search of every Fine from H. 8. to this present, for every yeare 8 d

For the search of every Fine during the

the Reigne of H.8 for ever y year 12 d

For certifying of every Record by a Writ of Errour, 1 2 s — *Certiora.*

For a *Quid juris clamat quem reddidum, reddit & per que servic.* 6 s — *Quid jur. clam. &c.*

For entring a claime upon a Record, 5 s — *Claymes.*

For allowing of Proclamations upon Fines brought into the Office after the Terme ended, 6 d — *Pr. Fines.*

For the *post Termin* of a fine. 12 d — *Pt. Terminum.*

The Chirographers Clarks Fees for ingrossing of Fines by the Attorney which sues them out.

THe Chirographers Clarks have received an allowance of the Attornies for their paines for them, which heretofore have been more advantageous upto them then now it is, being reduced to 2 s. 6 d. in certain, had, and made at the requeſt of 100 or 80. of the moſt ancient Attornies, with *John Brewer*, Eſquire, Clark of the ſaid Office, in 2 or 3 of King *James*: To which agrement had and made in writing, the ſaid Attornies ſet to their hands, and the ſame was delivered to Sir *Edward Cook* Knight, then cheife Juſtice of the common pleas, and hath ſo continued ever ſince, 2 s 6 d — *Fines ingroſ.*

For this allowance the Clarks doe write more then al the officers through which Fines do paſſe *viz.* They write every Fine long, or ſhort, four times o-

ver in a great ſet hand.

Fees belonging to the Clark of the Treaſury.

Copie. FOr the copy of every Iſſue and imparlance, for every ſheet, 4 d

For every Judgment, Deed enrolled, and reall Action, for every ſheet, 8 d

Searches. For the ſearch of every Term above ten yeers, 4

Exemplification. For every Exemplification not exceeding three ſheets, 7

For every ſheet more, 11 d

Records of Niſi Prius. For every Record of *Niſi prius*, not exeeeding three ſheets, 8

For every ſheet more, 4 d

Fees for the Keeper of the Treaſury from 12. Eliz.

Searches. IN primis, for ſearch of a Terme above ten year, 8

For ſeven years under ten yeares 4

For three yeares

Portam Rot. For ſearch of a Plea Roll, 4

Ligam. Rot. For a Roll caried into the Court, 6

For making up a terme and record,

Attourn. jur. For every Attorny ſworn in court, 12

Jur. at Bar. For a Jury at bar, 5

Niſi prius Mid. For a *Niſi prius*, in Mid. 2

Wager delay. For a Wager in Law. 5

For a copy of a *Precipe*, after the Term, 18 d.

For a fine acknowledged in the treasury, 4 d *Copy per fines.*

For a warrant of Attorney left unentred, and comes to be entred in the Roll after the Terme. 4d.

From an entry left out of the Kings silver, and comes to be entred in the Office, 4 d. *Intra pl. Term.*

From the Clark of the Treasury for my attendance every Term. 5 s.

For my key after the Terme. 18 d

The Fees of the Clarke of the Kings silver, as they were taken in the Eleventh yeare of Queen Elizabeth, *in the sixteenth year of King* James, *and in the late Kings time and since.*

Feod annuale.

Claves Thess:

IN *primis*, for the Fees of every ordinary Fine taken by the Lord chiefe Justice of the Common Pleas, or any Iudge of Assize in the VVestern circuit together with the copy, or *Post fine*, 18.d. For every fine taken in the same Circuit by speciall Commission, and for the Copy of the *Post fine*, 22d. For every ordinary fine elsewhere in England, and Munmouthshire taken as aforesaid without Commission, and for the copy, 10 d.

Fines in the Western Circuit

Fines by special Deed.

Ordinary fines.

Western. For every fine taken by ſpecial Commiſſion out of the Weſtern circuit, and for the copy, 14d.

Severall capti. For every ſeverall caption in any fine where it is taken at ſeverall times by ſpeciall Commiſſion, over, and above the former rates. 4d.

Certiora. For every fine certified by *certiorari* after the death of any Iudge, or other Commiſſioners; over, and above the former rates, 6 d.

Pt. Terni. For the *poſt Termin.* of every fine brought in the next Vacation after return of the writ of Covenant, 6 d.

Searches. For every ſearch of any fine every Terme, 4 d.

Copia. For every copy of the Entry of the Kings ſilver, 8 d.

Ne recipiatur. For every fee of a *Ne recipiatur*, of any fine either by order, or warrant of the Court or any Iudge, 3 s. 4 d.

For the continuing of any ſuch order or warrant from term to term till it be diſolved. 3 s. 4d.

The Philizers Fees.

Cap. al. & plur. IN *primis*, For every Cap. Al. & Plur. Cap. in Debt, Detinue, and Treſpaſſe, not having more then foure names in a writ, and entry thereof, 6d.

Delivery of Record of the cap. *Item*, for delivery of every firſt Cap. upon Record and Entry thereof; 4 d.

Teſtat. For every *Teſtat.* upon any of the

Pone ſum. ſaid writs, *Pon. in Replevin & Summons.* 12 d.

12 d. *Briain compo.*

Item, For every *Cap. Al. & plur.* in Accompt, Covenant, Annuity *Ejectione firme*, and upon penall Stat. 12 d

Item, For every Writ in an action upon the case or more, according to the length, 12 d. *Actions super casum.*

For every returne *Habend.* and second deliverance, and entry thereof 2 s. 6 d. *Return Habend*

For every *Non. omit. & cap.* in VVithernam, 2 s. *Non omit. Withernam*

For every writ of partition, *Warrant Charte*, *Quare imp.* and waste, 12 d *Partition waſt. Quare impedit. War. Cart.*

For every writ of inquiry of damages in reall actions, *Scire fac. & Superſed.* 2 s. *Inqui. de dam.*

For every grand *Cap. Al. Sum. pet. cap.* and entry thereof, 2 s. 6 d. *Scire fac. ſuperſe Gr. & pet. cap.*

For the copie of the entry thereof, 8 d *Copia in.*

For the demand in every writ of view and entry thereof, 2 s. 6 d. *de View.*

For every writ of Seizin and entry thereof, 4 s. 6 d. *Seizin.*

For the view prayer. 2 s,

For a Copy of the entry thereof, 8d

For every writ of *Habeas corpus, duc. coram, diſtring. nuper vicec. & diſtring. ballivum.* 2 s. *Habeas corp. & diſtring.*

For every writ of reſcous and entry thereof, 2 s. *Adjornment. cont. reſort.*

For the entry of every adjournment diſcontinuance, and reſort, 4 d. *Reſcous.*

For every ſpeciall bail, and the entry there- *Special baile.*

thereof, 2 s. 10 d.

For every appearance in reall and mixt actions, 4 d.

Appearance. For every appearance upon writs of arrest, and entry thereof, 12 d.

Searches, rules, Copies, number, Roles. For searches, copies, number, roll and giving of Rules, each of them 4 d.

Exigenters Fees.

Fees. Exigenters. EVer since the Statute of *Henry* the eight, which gave the Proclamation upon the Exigent, the whole Estate of the Exigenters Office did consist in the making of three Writs, *Videlicet*, An Exigent, a *Superſed*, and a Proclamation, all which Writs are warranted by one and the ſame Record.

For all the time of our remembrance and experience in the ſaid Court, which hath been (by the moſt ancient of us) for about thirty years or thereabout the fees of the ſaid writs were as followeth *videlicet.*

The Superſed. 2 s.

The Exigent. 11 d.

The Proclamation, 6 d.

Which fee of 6 d. was given by the Statute of 6. *Henry* the eighth, being now about one hundred and ten years ſince.

About eight or nine years ſince the Superſed. (*quia improvid.*) being the leaſt

leaſt Writ in labour, and more in pro- then both the other, was granted by Letters Patents under the great Seal of England, by the late King of famous memory, to Maſter *John Murray*, then of his Majeſties Bed-chamber, and partly to avoid conteſtation with his ſaid Majeſties grant, and upon hopes & promiſes of ſome recompence other way, the Exigenters did give way to the ſaid Patent, and have ever ſince loſt the benefit of the ſaid Surperſed. whereupon the Judges did give increaſe only of a 1d. to be taken upon the Exigent, for releiſe of the Exigenters, & their Clarks, and ſo the Exigent was made 12d. which increaſe of 1d. is all the recompence which hitherto they have received for that great loſſe of the Superſed.

We have likewiſe heard, that above forty years ſince, and before our times by occaſion of an act of Parliament, made 31. *Eliz.* whereby the proclamation of the Exigent was much inlarged without any addition or increaſe of Fee, there was one penny added to the Exigent to be given to the poore Clarks for writting the ſaid writs, over & above the ancient allowance which penny hath ever ſince been paid to the ſaid poor Clarks accordingly, without any benefit to the Maſters themſelves.

Other increaſe, addition, or alteration of Fees in our Offices we know not of,

of, nor ever heard of, although the length of the said Exigent, or Proclamation with their entries considering the loss of the *Superſed* (all which we humbly submit to his Majesties Commissioners) might perhaps have justly deserved some further improvement. And it is certainly true, that no other increase of fees hath been in our Officers since 11 *Eliz.* nor for ought we ever heard, or can by any meanes conjecture for these hundred yeares at the least.

HILAR. TERTIO *Caroli Regis.*

The Clarks of the Jurors.

A Note of all such Fees as are now usually taken by the Clarks of the Jurors of his Majesties Court of of Common-pleas at Westmin. *being the same, and no other then such as have been taken time out of minde.*

Habeas Corpus. IN*primis*, For a Writ of *Habeas Corpus Juratorum* in debt and trespasse, 10 d

For the like Writ in all other Actions, 16 d

Distring. For a *Distringas cum decem Tales*, 2 5 4 d

Search copy. For a Termes search, the copy of a Jury

ry, a number Roll, and a discontinuance and adjournment for every of them, 4 d — *Court adjorn.*

The Clark of the Essoynes.

Inprimis, For every Essoyn and exception, 4 d — *Essoyne except.*
For the Copy, 4 d
For every adjurnment, 4 d
For the Copy, 2 d — *Copia.*
For every *Idem dies*, 4 d — *Adjornment:*
For every Non-suit for want of adurnment in Actions personal, 2 s 4 d — *Copies.* *Idem dies.*
For the Copy, 1 2 d — *Non pros.*
For every Non-suit in Actions reall, 4 s 4 d
For the Copy, 12 d
For the exemplification of every Essoyn and Nonsuit thereupon when it shall happen, being very seldom, 7 s 6 d — *Exemplificat.*
For the Copy thereof, 3 s 4 d
For the Clarke, 12 d — *Feod. annua.*
For severall fees from severall Officers of the Court towards the numbring and marking of the Rolls, 4 l 9 s.

Outlarie Office.

In the Kings Attorney Generall his Office of the outlawries executed by his deputy Master Johnson, *the Fees are as followeth*, viz.

Cap. utl. special. For a speciall *Cap utlegat.* against body, lands, and goods, 2 s 4
For a *Proprium*, 14

Habeas Corp. duces tecum. For every Writ of *Hab. Corp & ducs tecum*, when they are sued forth, 2 s 4
If a proper. 14

Cap. utl. general. Certifi. utl. in lect. For a generall Cap. *utlegat.* 10
If a proper. 6
For ingrossing and certifying a speciall writ, with the inquisition returned by the sheriffe, of lands, or goods found thereupon, and for the Exigent with the Return thereof at large certified into the Exchequer, then it is required, the Office Fee is eight shillings, unlesse it be commanded by the Lord Treasurer, Chancellor, or Baron of the Exchequer, or by the Kings Attorney Generall, or Solicitor for his Majesties service onely, then no Fee is due, 8 s. *aut nil*

Certifica. reversal in secium. For ingrossing and certifying a Reversall into the Exchequer to discharge seizure upon Outlawries, when any is, 5
And to the Clark, 4

Exon. libri de utl. For entring the Reversal in the out-lawry

lawry Office to discharge all Processe thereupon, or upon any VVrit of Errour, 2 s 8 d

For certifying of an Outlawry; or Reversall when it is pleaded, 2 s. *Certifica. utl. vel reversal.*

And to the Clark, 4 d.

For search of an Outlawry one Terme (as in all other Offices) 4 d if above a yeare, then 3 d a Terme, which is the utmost. 3 d *Search.*

For entring and filing an Exigent, with one Processe thereupon, 4 d. *Filaco exsa.*

These severall Fees aforesaid were paid and received in Easter *Term* 34 Eliz. *and ever since to mine own knowledge, for so long I have been and continued Clarke, and to all Attornies Generall that have been since that time.*

These (as I understand) are the true Fees.

The Fees of the Seal for Writs.

ALL VVrits of the Kings Bench, and Common-pleas, 7 d *Seales of Writs Exemplifica.*

The exemplification of the Kings-bench, 2 s. 6 d.

The exemplification of the Common pleas, 2 s. 2 d.

Outlawries, 1 d

Prepr. 1 d.

Fees

Fees due to the Marſhall, and Proclamator of the Court of Common-pleas, given by Order made by all the Judges of the Court, Term. Trin. 31. H. 1. poſt conqueſtum, and received accordingly by the ſaid Marſhal and Proclamator, ſo any thing appeareth to the contrary, untill 11. Eliz. and ever ſince.

Judgments. IN primis, For every Judgement, and Nonſuit, 4 d.

Fines. *Item*, For every Fine, 8 d.

Item, For every ſmall Iudgement, 12 d.

Chief Vſher of the Exchequer, and Marſhall and Proclamator of the ſaid Court of Common-pleas by Leaſe from *Clement Walker* Eſquire who hath the ſame Office in inheritance by grand Serjeanty.

The foure Cryers.

HEre after doe enſue the good Ordinances and Rules made as well by the Kings Juſtices of the Common-pleas in times paſt, as by the Juſtices now being, for the good rule and order of the ſaid Court, which ſame now Juſtices do charge and command every of the ſaid Officers and Attornies well and truly to obſerve and keep upon the pains therein limited.

Which

Which ſaid orders were inroled *Termin. Trin.* 35. H. 1. *poſt conqueſtum rot.* 494. *Jo. Prieſt* chiefe Iuſtice of the common Pleas, *Ni Auſten, Pet. Auder; Ro. Dacers, Ro. Dawby, Wa. Moile, and John Needham* Juſt. of the ſame Court.

The Cryers Fees from 11. Eliz.

Iudgements.

FOR every Iudgement: 4 d.
For every finall Iudgment, 12 d. *Fines.*
For every Nonſuit, 4 d. *Recoveries.*
For every fine, 8 d. *Iuries.*
For every Recovery, 8 d.
For calling a Iury if they fill not, 2 s.
For every Iury if they fill, and ſerve and give up their Verdict the ſame day, at the Bar the ſame day, and for keeping them till then. 16 s.
If the Iury lie all night; that wee be forced to watch and wait on them all night, 30 s. *Carrying Rolls*
For carrying every bundle of Records out of the Treaſury into the Court, and back again into the Treaſury, 6 d. *Attorn. jura. Bailes.*
For every Attorney that is ſworn, 6 s. *Oathes.*
For every Baile, 12 d. *wagers of Law*
For every wager of Law, old fees, 4 s. 4 d *Calling ſcire fac.*
For every *Scire fac.* called in Court, 4 d.

Nisi prius. For every *Nisi prius* before my Lord chief Justice, 4 s.

Guardians. For every admittance to a Guardian, 12 d.

The Fees of the Keeper of the Court, from 11. Eliz.

FRom the Clarke of the Treasury for hanging the Cloath of the Court, 6 s. 8 d.

Feod. annu. For a VVager of Law and VVager-men, 9 s. 6 d.

Wager of Law. For a Jury at Barr, 5 s.

Juries. For every Attorney sworn in Court, 12 d.

Attornies. For a *Nisi prius* in Midd. 2 s.

Nisi prius. For a Baile, 4 d.

Bailes. For a fine, 4 d.

Finet. For a Deed acknowledged, 4 d.

Deeds acknow. For satisfaction acknowledged, 2 d.

Satisfaction.

The Fees of the Clarke of the Inrolement of Fines and Recoveries.

Of fines and recoveries ingross IN primis, The fee due to the Iudge by the Stat. of 23. *Eliz.* for inrolling of every fine and recovery, 6 s. 8 d.

Exemplification *Item*, Due to the Iudges by the same Statute for exemplifying every inrolment,

Search. For search of every fine inrolled for every year, 16 d.

For

For copying every fine inrolled, for every sheet, 1 2 d — *Copies.*

For the Clarks fee for inroling by the Roll, 8 s 8 d — *Inrolements.*

For exemplifying after the same rate, 8 s 4 d — *Exemplificat.*

For every rule upon Amendments, 3 s 4 d — *Rules so amendments.*

For returning Writs of Covenants upon fines and Writs of entry, Summones, and Seizins upon common Recoveries, as Deputy of Record for Sheriffs appointed by the Court, the ancient fee is, 2 s — *Return of writs of entry. Covenant seizins, &c.*

The Porter of the Court his Fees from 11 Eliz.

FOR every Writ of Entry with Mr. Attorney Generall, 4 d — *Writs of Entry.*

For a Jury at Bar, 5 s — *Juries at Bar.*

For a *Nisi prius*, 2 s — *Nisi prius.*

For a Wager of Law, 6 d — *Wagers of law.*

For a fine acknowledged 4 d — *Fines.*

For a Baile, 4 d — *Bailes.*

For satisfaction acknowledged, 2 d — *Satisfaction.*

For the Attornies Oath, 12 d — *Attorn. sworn.*

For a Guardian, 4 d — *Guardian.*

Alienation Office

THo. Ravenscroft, Fran. Poulton, Geo. Coultrop, Esquires, Commissioners.

Tho. Bond Esquire, Receiver.
Take no fees, but receive a certain stipend from the King.

Fees taken by the Master of the Chancery, for that Office appointed

Docquets. FOR signing every Docquet upon License and pardon of Alienation 2

Pt. Writs. For every writ of Entry, for land holden in chiefe. 2
For Writs of Entry of lands not holden in chiefe, 4

Affidavits. For Affidavits upon discharge of Tenures, 2

The usuall Fees taken in the Office of Compositions for Alienations, by the Clarks three.

Certificate. FOR a Certificat upon a Writ of Entry. 3s 4

Pardon. For the warrant to the great Seal for pardon of Alienation, 10

Discharges of Proces. For viewing the Subjects evidences search of the Tenures, and drawing the Affidavit with proces, to be discharged, 6s 8

Release. For a Release in nature of a pardon of alienation upon a common Recovery, and for the like release upon a special Livery and also for a Release upon a gener

general pardon at the Coronation, or other times for each of them, 1 l 3s 4d

For the note of a Sheriffes discharge upon a seisure, 3s 4d *Discharge of seizure.*

For every Exo, and for certifying thereof into the Exchequer 1 2 d

For the Sheriffs acquittance, 6s 8d *Acquittance.*

FOR entringin a large Book every Writ of Covenant fineable, *videlicet* in the Terme times, 6 d *Entry of Writs.*

And in the Vacation, 12d

For entring in another Book remaining in the said Office every Docquet upon a license of Alienation in the Terme time, 1 2 d *License of Alienation.*

And in the Vacation, 2 s

For every Docquet for a pardon of Alienation in Proces of *Distringas*, or *Sire fac* 2 s *Pardon.*

For every Writ of entry of lands holden *in capite*, and entred in the same book, 6 d *Entry of Lands holden.*

And in the Vacation, 12d

FOR indorsing every Writ of Entry, 6 d *Indorsing bre. Intr. bre.*

For indorsing every Writ of Covenant in Term, 4 d

In the Vacation, 6 d

For entring unfiled Writs, 6 d

For drawing the discharges of Tenures in Parliament, and entring, them, 3 s *Discharge of Tenures.*

The under-Sheriffe of Middlesex taketh these Fees following in his Majesties Court of Common-pleas.

Warrant. FOR a Warrant upon a Cap. for every name, 4 d

Return ven. fac. For a returne of a *Venire fac* 2 s

For a Warrant upon a Cap. *ntlegat*, 4 d

Return Hab. Corpus. For a return of a *Hab. corpora Juratorum*, 4 s

Sum. Jur. For Summoning the Jury, for every name, 4 d

Cepi corpus. For a *Cepi Corpus*, for every name, 4 d

Return Exfa. For returne of an Exigent for every name, 4 d

Return procla. For return of a Proclamation, 12 d

Scire fac. For returne of *Scire fac.* 2 s

For returne of a *Nihil habet* on a *Scire fac.* 12 d

The

The Warden of the Fleet his Fees.

A note of the Fees due and belonging to the Warden of the Fleet, and nnder-Officers, as appeareth by a Commiſſion under the great Seal of England *from the late Queen* Elizabeth *in the third yeare of her Reigne, and confirmed in the* 37. *year of her Reign, what every ſeverall Priſoner in their ſeverall degrees ought to pay.*

Commitments.

AN Arch-Biſhop, a Duke, a Dutcheſſe, are to pay for their Commitment fee to the ſaid VVarden and his Officers, having the firſt weeks dyet with wine. 21 l. 10 s.

Alſo they are to pay for their ordinary weekly dyet with wine. 3 l. 6 s. 8d

Commitments.

A Marquis, a Marqueſſe, an Earle, a Counteſſe, a Vice-Counteſſe, are to pay for their commitment fee to the ſaid VVarden and his Officers, having the firſt weeks dyet, 14 l. 11 s.

Alſo they are to pay for their ordinary weekly dyet with wine, 2 l.

A Lord Spirituall, or Temporall, a Lady, the wife of a Baron, or Lord,

are to pay for the Commitment fee as above said, having the first weeks dyet with wine, 11 l. 4 s. 10 d.

Also they are to pay for their ordinary weekely Commons with wine, 1 l. 6 s. 8 d.

A Knight, a Lady, the wife of a Knight, a Doctor of Divinty, a Doctor of Law, or others of like calling, are to pay as aforesaid for their commitment fee, having the first weeks dyet with wine, 5 l.

Also they are to pay for their ordinary weekly Commons with wine, 18 s. 6 d.

Commitments. An Esquire, a Gentleman, a Gentlewoman that shall sit at the Parlor commons, or any person under that degree, that shall be at the same commons; are to pay for their commitment fee as aforesaid, having the first weeks dyet with wine. 3 l. 6 s. 8 d.

Also they are to pay for their ordinary weekly commons with wine, 10 s.

A yeoman, or any others that shall be at the Hall commons, man or woman; are to pay for their commitment fee having the first weeks dyet, 33 s. 4 d.

Also they are to pay for their ordinary weekly commons. 5 s.

A poore man in the ward, that hath part of the Box; is to pay for his commitment fee; having no dyet, 7 s. 4 d.

Also

Also there is due to the said Warden 20d. *per diem, for the whole day, and* 10 d. *for every man, that he may lawfully license to go abroad.*

MOreover the said Warden hath for return of writs as Sheriffs, and Bailiffs of Liberties have, which he hath allowance for return every *Hab. corp.* or Attachment, 2s 4 d. *Return of writs*

Also for every *Habeas corpus cum causa* there are fees returning the causes, *videlicet.*

For allowing the VVrit, 2s 4d.
For returning the first cause, 2s.
For every execution, 2d.
For every action, 12d

VVhich are due to the VVardens Clarks, and 5 s. to the VVardens Servants for bringing every Prisoner safe to the Bar, *Bringing a prisoner to the Bar*

Also he hath for allowance of every Supersed. and discharge. 2s. 4d. *Allowance of Supersed.*

Also when any man is committed by Order out of the Courts of Star-chamber, Chancery, Court of wards, and Liveries, Court of Exchequer, Court of Requests, and Court of Dutchie, the Wardens servants (being sent to apprehend them, and bring them to the Fleet, according to the Tenour of *Travelling charges for apprehending parties committed.*

of their Commitment) have foure pence the mile where they are apprehended, and six pence the mile back again, and the Clark hath 2 s. for making the VVrit.

A Table of the due Fees of the Protonotaries Court in the Common Pleas.

These are the Fees due and belonging to the three Protonotaries of the court of common Pleas at VVestminster *for Entries of* Declarations, Pleas and Judgements. *And also for making and entring of Writs, in their severall Offices, and for other due's belonging to them, confirmed and allowed by the late King, by his Letters Patents under the great Seal of* England, *dated at* Cambury *the 22 of* July *in the 12 yeare of his Reigne, and are mentioned and expressed in a Schedule of fees to the said Letters annexed, and recorded in his Majesties Court of common Pleas at* VVestminst. *in the Terme* Saint Michael *next following*, Rot. quinto, sexto, septimo, octavo, nono.

Common decla. & Pleas.

IN primis, For the entry of every common declaration, common Plea in bar wherein no Free-hold is pleaded, common Replication, and Re joynder in actions personal, 12 d

Special Narr. in actions personall.

For the entry of every special Declaration, special Plea in Bar, or Abatement, Free-hold, Replication or Re joynder, and Pleas subsequent, sheets, every sheet containing twel lines at the least, and every line co taining ten words, 2 An

And for every ſheet exceeding, 8 d

For every declaration in actions upon the caſe, *Ejectione firme*, accompt, annuity, conſpiracy, covent, deceit, partition, *Plegiis*, *acquiet*, and debt upon ſtatutes, plaint in Aſſize, and the like ſpeciall actions, and in reall, mixt, and popular actions, if the declaration or plaint exceed not three ſheets, 2 s — *Speciall Narr. in ſpeciall actions.*

And for every ſheet exceeding 8 d

For the entring of every Bar, Replication and pleas, ſubſequent in every of the actions laſt above recited, and in the like actions, not exceeding three ſheets 2 s — *Bar in ſpecial actions.*

And for every ſheet ſo exceeding 8 d

For the Oyer of every Bill, Obligation, Indenture, Record, or Certificate, or the like, entred *in hæc verba*, not exceeding the length of three ſheets, 2 s — *Oyer de faits.*

And for every ſheet above that length, 8 d

For Recording of every apparance by the Court, 2 s 4 d — *Apparances.*

For the entry of every recognizance without condition, challenge to the Sheriffe, or Coroners, or to the Array, or other ſpeciall averments, 2 s — *Recognizance. Challenge.*

And for the entring of every recognizance with a condition, 4 s

For every Judgment in debt, treſpaſſe, or detinue, without a Tales for the Prothonotary, 2 s — *Judgments.*

And

Adjournments. And for entring every adjournment, 4

For every Judgment with a Tales besides the fee above recited, 2

Judgments. Remanets. For every *Remanet*, and Judgment for costs given to the Defendant by the Statute besides the fee aboveſaid, 2

Iudgments. For every Iudgment in all other actions, as well perſonall as mixt, and reall, and prohibitions, and the like 4

Satisfaction. Recordatur. diſcont. Retraxit. Nolle proſequi. For every ſatisfaction *Recordatur* discontinuance, *Retraxit*, Relinquishment *Nolle proſequi*, or the like in actions perſonall, 4

And in reall actions, 2

Recoveries. For the entry of a ſingle Recovery and the Writ of ſeiſin thereupon 10 s 6

And for every Voucher more, 4

For the entry of every *Mittimus* & *Dedimus poteſtatem*, for a common recovery, 6

For the entrance of a Summons *ad warr*, for a common Recovery, and the Writ of Sommons *ad warr.* 4 s 6

For the entry of a *Certiorari* to certifie a warrant of Attorney for the tenant or voucher, 4

And if for both, 6

Foreign Voucher. For every foreign Voucher ſent to the common-pleas to ſummon the Vouchee, if the Record be not above three ſheets, 2

And for every ſheet more, 8

The like fees are to be paid when the Record

ecord is remitted back again, after
e Voucher determined, 2s 8 d
For the entry of every ſpeciall Ver-
ct, wherenpon a *Cur. adviſar vult* is *Special verdict*
tred, being not above the length of
ree ſheets, written as abveſaid. 2 s
And for every ſheet exceeding that
ngth, 8 d
For the entry of every generall ver-
ct, with a *Cur. aduiſar vult.* without a *General ver-*
les, 2 s *dict*
And with a Tales, 4 d
For the entry of every Remittitur of *Remittitur.*
bt or damages, 12 d
For the entry of every Information *Informat.on.*
on any penall Law, and ſigning the
b penz onely, 2s 8 d
For the entring of every ſurmiſe for
Prohibition to be granted, not ex- *Prohibition,*
eding the length of three ſheets, as
oreſaid, 2 s
And for every ſheet above that
ngth, 8 d
For the entry of the Oath of every
tneſſe to prove the ſurmiſe in a Pro-
bition, or *Audita querela* brought by
Infant, and the entry of the prooſes *Proof de ſugg.*
morte & vita vtrim, dower, and the
e actions and ſuits, 2 s
For the releaſing of any default in
y reall action, 2 s
And entring the recitall of the grand
ape, 4 s
And if under five marks, *Nihil*

For

Exami. record. For examining every Record of *Nisi pri.* 12 d

Record in coun. palatine. For making the Record for triall of an iſſue in any of the County Palatines, for the firſt three ſheets, 2 s

And for every ſheet more after, 4 d

Exemplificat. For the exemplification of any Record, not exceeding ſix ſheets, 5 s

And for every ſheet exceeding the rate, 8 d

Seizin in dower. For the entring of Seizin in dower and dying ſeized, the return of the Seiſin, exceeding not aboue three ſheets, 4 s

For every ſheet exceeding, 8 d

Non ponend. in aſſis. For Entring of Writs of Exemption *de non ponend. in jurat*, and patents of *libertat. allocand*, and Protections, cogni-

Cog. de pleas. zance of Pleas, and the like, according to the rates aboveſaid, if they exceed not three ſheets. 2 s

And for every ſheet exceeding, 8 d

Judgment per. default in waſt. Quæ impedit. For the entring the default upon the diſtreſſe in waſte, *Quare impedit.* and the like, and Judgment thereupon, if the title or count do not exceed three ſheets. 6 s 4 d

And if it be more then as aforeſaid, for every ſheet, 8 d

Quo warranto. For entring of *Quo warranto*, if it exceed not three ſheets, 2 s

For the entry of every plea thereupon, according to the ſame rate before 2 s 8 d

Fo

For the entry of a Plea of accompt pleaded before Auditors if it be not above three sheets written as aforesaid. 2 s. *Account before Auditors.*

And if more, for every sheet exceeding, 8 d.

For the entry of every Summons, and Severance, and Aide Prayer, 2 s. *Severances.*

For the admission of an Infant to his *Prochein amie*, or Guardian, 2 s. *Aide Prayer.*

And if it be by commission, 4 s.

For entring of the Defendants discharge upon a *cap. pro fine*, or for a contempt, 2 s. *Cap. pro fine.*

For the like upon Rescous, returned and admitted to his fine, 4 s.

For traversing of a Rescous, and issue thereupon, 6 s.

For entring of the allowance of every generall and speciall pardon of Outlary before Judgement, and after, 5 s. 4 d

For entring of a *Dies dat*, in Debt, detinue and trespasse, 12 d.

And in all other actions, 2 s.

For the entring of the Receit of a feme covert, Tenane in taile, Lessee for years, or the like, 2 s

And for the entry of the plea, if it exceed not three sheets, 2 s.

And for every sheet exceeding, 8 d.

And if the Receit be by VVrit, then more for entring of the VVrit, 2 s.

For the entring of an Assize delivered in the Common-pleas by Justices of

of assise to be inrolled, for every shee

And if the Assise come into the Co mon Pleas by Certiorar. then m for entring the Certiorar.

Abridgment. For entring every Abridgmen the demand in dower Assize, or t like,

Pone. For the entry of every Pone to move a plea by writ out of the cou Court there holden by Iustices, & the return of the *Pone.*

Mittimus. For the entring of any Record s in the common Pleas by *Mittimus*, otherwise; and likewise for the entry

Rege inconsulto every *Rege inconsulto*, or such like, i exceed not three sheets,

For every sheet so exceeding,

Certificate of bastardy. For the entring of every Certific of bastardy certified by the Bishop, the awarding of the writ and Iudg ment thereupon,

Journies accounts. For the entry of the License of t Court, to purchase a new writ of jo nies accompts,

Delivery of Records. For the entry of every Original w delivered of Record in reall or m Actions,

Challenge. For the entry of every sheet abo three sheets of every challenge to t Sheriffe or Coroners, or to the Ar or other special averments, or the li

Remanet. For the entry of every *Remanet* reall actions,

For the entry of every *Remittitur* re

reall and mixt Actions, 2s

For the entry of every sheet above three sheets of every aid Prayer, 8 *d* *Aid Prayer*

For the entry of an admission of a Guardian, if it be by Commission, and *Mittimus*, 6 s *Admission to Guardians.* *Privy Seale.*

For the entry of a privy Seale, for every sheet, 8 *d.* *License.*

For the entry of the License of the Court to compound upon penall Statutes, 2 s.

For entry of every warrant of Attorny made by the Tenants in common Recoveries, or the like, after their appearance at the Bar, 2 s. *Warrants of Attorney.*

For every judgement by speciall confession of the title in *Quare imp.* or the like, if it exceed not three sheets, 4 s. *Qua. Imp.*

And for every sheet after, 8 *d*

For the entring of every speciall imparlance, 2 s

For the entring of every Committitur of a Prisoner by the Roll, being brought to the Bar by Writ, and every render of the body in discharge of the Baile, 4 s *Special Imparlance.* *Committitur.*

But if it be without VVrit, then in either Case but 2 s

For entring of every demand of a Prisoner to appeare and remand the said Prisoner, 4 s. *Remand.*

For the entry of every Essoyn in the Plea Roll, as upon Wagers of Law, 12 *d.* *Essoyns.*

For entry of the Baile upon every *Baile.*

Reverſall for inſufficiency of Exigent, or of the Returne,

Mar. ſur. demiſe For the entry of every Declaration in deb upon demiſe, or the like ſpecial Declaration, if the Declaration exceed not three ſheets,

And if ſuch Declaration exceed the number of three ſheets, then for the entry of every ſuch ſheet, containing twelve lines, and every line ten words

Common. Decla. For the entry of every ſeverall count upon an Originall in Debt, Detinue, Treſpaſſe, and the like,

Actions on the caſe. For the entry of every ſeverall count in Actions upon the Caſe and Account, and the like upon ſeveral dayes, if the count not exceed three ſheets,

Account. And for every ſheet ſo exceeding,

Special condition. For the entry of every ſpeciall condition, or indorſment of any obligation entred *in hæc verba*, not exceeding the length of three ſheets,

And for every ſheet ſo exceeding,

Common cond. But if the condition be in debt for payment of mony, at one day, or under the length of two ſheets, then for the entring thereof but

Mittimus. Certiorari. For the entry of every *Mittimus* or *Certiorar*, and the Return thereof

But if the Returne thereof exceed three ſheets, then for every ſheet ſo exceeding,

Prohibition. For entring of the Count in a Prohibition, and pleadings thereupon

after an appearance of the Defendant, not exceeding the length of three sheets, 2 s

And for every sheet above that length, 8 d

Attaint, false Judgment.

For the entry of exery Writ of Attaint, or false Judgment, 2 s

For the entry of the Returne thereof and the Assignement of *Errours* or false Oaths, not exceeding three sheets, 2 s

And for every sheet more, 8 d

Proof in a Prohibition.

For the entry of every sheet above three sheets of the Oath of every witnesse examined to prove the surmise in a Prohibition, or *Audita querela* brought by an Infant, and the entry of the proofs *De morte & vita viri* in dower, and the like actions, and Suits, 8 d

Audita querela and Dower.

Fees due to the Prothonotaries for Writs, and the entries of them amongst other dues.

Fees for writs.

FOR every writ of Prohibition, or consultation, not exceeding foure sheets, 2 s

Prohibition.

For every sheet so exceeding, 4 d

For every Withernam return *habend.* after appearance, second deliverance, writ of privledge, *habeas corpus, Procedend. certiorari,* Summons and Resummons, *Petit. cape, ve. fac. sci. fa. Elegit, extent. supers. Subpœna.* VVrit to the

Withernam.

Habeas corpus. Sum. & al. bre. Spenal.

Bishop. Attachment in Ass. *Distring. Iur. habeas corpus*, and *Distringas* in Ass. *& attaint*, and the like, *habere fac. possessionem*, Writs of view, *Mittimus. Indemnitat. nois* and every other special Writ, 2 s.

Entry of Writs.

For the entring of every such Writ, which requireth an entry not exceeding four sheets, 2 s

And if more for every sheet as abovesaid, 8 d

Ca. fa. fi. fac. Testat. distr. enquire in tres.

For every *Ca. fa. & fi. fa.* 6 d

For every *Testat. sur. Ca: fa. & fi. fa. distrings ad deliberand.* and Writs to inquire of damages in trespas and Replevin, 12d

Inquir in casu. Cap. & Exi. pro fine.

For Writs to inquire of damages in Covenant, Ejectment, Actions upon the case, and the like, 2 s

For every *Capias pro fine*, 6 d

For the *Exigent*, upon a *Capias pro fine*, 10d

Intra. Retorn. Br.

For the entry of the Returne of every Writ in the prothonotaries Roll other then the *Ca. fa.* returned *non est invent.* and the *fi fa.* returned *nulla habet bona*, whereupon futher processe is awarded not exceeding foure sheets, 2 s

Baile sur privi. Habeas corp.

And if more then for every sheet, 8d

For the entring of every writ of priviledge, or *habeas Corpus* with the Baile for one cause, 6 s

And for every name more, 2 s

Commitur.

For entry of every *Committiur* upon a *habeas corpus una cum die & causa*, 2 s

And

And for every other cauſe, 2s.

For every reverſall upon an Outlary for default of Proclamation with one name, and the Baile, or *nolle proſequi*, 4s 4d. *Reverſall.*

And for every name more, 2s.

For every *Ca.ſa.& fi. fa.* after a *devaſtavit*, 2s *Ca ſa.& fi ſa. pt. Devaſtavit.*

Whereof by allowance from the Prothonotaries the Clark hath had, 8 *d.*

For every ſheet exceeding four ſheets of VVrits to inquire of Damages in Covenant, Ejectments, Actions upon the caſe, and the like Actions 4*d* *Inquir. in caſu. &c.*

For the Writ of Liberat. or the like ſpeciall Writs, 2s. *Liberat.*

Whereof by allowance from the Prothonotary the Clark hath had, 8 *l.*

For the entry of every ſuch Writ, and the entry of every other ſpeciall Writ which requireth an entry not exceeding four ſheets, 2 s. *Intra. Brc.*

And for every ſheet ſo exceeding, 8*d.*

For every *Diſtringas* in detinue, 12*d.* *Diſtringas.*

Whereof the Clark by allowance from the prothonotary hath had, 4*d.*

For VVrits to inquire of Damages in Covenant, Ejectment, Actions upon the caſe, and the like Actions, if they exceed not four ſheets, 2 s *Inquire in caſe &c.*

VVhereof by allowance from the prothonotary the Clark hath had, 8*d.*

For the entrie of everie *Committitur*, upon a *habeas corpus una cum die & cauſa*; with one cauſe returned, beſides the entry of the VVrit, 2s. *Committitur.*

And for the entry of the writ, 2 s
And for every other cause returned 2 s

Proces. sur. Informations. For the signing of all processe upon information, excepting the first *Subpœna*. 1s 4d

The Prothonotaries Clerks Fees

Copies. IN *primis*, for the copies of common Declaration's and pleas, for every sheet containing twelve lines, and every line ten words, 4 d

For every sheet in reall and mixt actions, and actions upon any Statute, and the like, 8 d

Draughts. For drawing of every speciall declaration, and plea for every sheet, 8 d

Continuance. For every continuance every Terme of every issue, writ, *imparlance*, *demurrer* of speciall verdict, or adjournment, 4d

For exemplifying every Recovery with a single voucher, 4s 6 d

Exemplificat. For exemplifying of a double voucher, 6 d

And for every Voucher more, 12 d

For exemplifying of any record, not exceeding eight sheets, 5 s

And for every sheet more, 6 d

Drawing of Writs and Entries thereof. For drawing of every extrordinary long writ after the rate of every sheet, 8 d

And for the entry thereof (if it so require) for every sheet, 4 d

For

For a copy of Judgement for every sheet, 8 *d.* — *Copies of Judgments.*

For the entry of every VVrit, and the Returne thereof into the Protonotaries Remembrance for drawing up of a judgement, if it exceed not three sheets, 6 *d* — *Entries in rem.*

And for every sheet after, 4 *d*

For entring of every common rule into the bill of Pleas, or common Remembrance, 4 *d.* — *Rules.*

For the entring and ingrossing every Summons for a recovery, and for the making of the Writ of Summons, 2 *s.* — *Sum. for recoveries*

For the entry of every *Mittimus* and *Dedimus potestatem* for a recovery 2 *s* 6 *d* — *Mittimus.*

For the ingrossing of every *Nisi prius* after the Rate of every sheet, 4 *d.* — *Ingro nisi prius* *Intrat. case testat*

For entring of every *Testat. fur. ca. sa & fi. fa.* 4 *d.*

For the search in every Term in the Protonotaries Office, in his docquets, or Remembrances, 4 *d.* — *Searchers.*

For the issuing out of the Court mony, of the partie receiving it, 1 *d* in *l.* — *Court mony*

For the making of everie long writ, as Prohibitions and the like, for everie sheet, 4 *d.* — *Making long writs.*

For the prosecution and issuing out of process for the King to bring in the partie for to make fine for his contempt untill the partie render himselfe, or be Outlawed, besides the fees of the Court, 3 *s* 4 *d.* — *Cap pro fine.*

And if there be cause of prosecuti-

on after the *Exigent* returned, then more, 3 s. 4d.

Copy ſuggeſt. For the copies of ſuggeſtion to grant a Prohibition, for every ſheet. 8d.

Tract. Prohibit ſpecial verdict, For drawing of every ſurmiſe to have a Prohibition, ſpeciall verdict, and the like, for every ſheet, 8d.

The Protonotaries Clerks Fees for Informations only.

Informations. FOR ingroſſing of every information, 8d.

For a copy of the ſaid information, if it amount to the number of five ſheets of paper, or upwards, 3 s 4d.

If it be under the number of five ſheets, then for every ſheet, 8d.

For the making of every *Capias pro fine* upon an information, 6d.

For entring of the generall iſſue upon the Roll where the information was firſt entred in the Terme it was firſt exhibited; 8d.

For the Regiſtring of every Licenſe to compound in the office book, 4d.

An ancient Fee due to the ſecond Protonotaries Clerk only.

Fines. FOR recording of every fine acknowledged at the bar, by writ, and moved by a Serjeant, 4d.

Fees

Fees due to the Secondaries of the Protonotaries in their severall Offices.

Secundaries fees.

Copies of rules.

FOR the copy of every common Rule, 4 *d*

Drawing and entring of rules

For taking a note of the Rule of the Judges in Court upon a motion of a Serjeant, for drawing the same Rule in paper in Latine words, and entring it into the Bill of Pleas, and the copy thereof, the draught not exceeding six lines in paper, 8 *d.*

If the Rule exceed six lines, then 12 *d*

Wagers in Law

For every wager in Law, in Court, or Nonsuit of the Plaintiffe, upon a wager of Law, 12 *d.*

Committitur,

For the entry of the *Committitur* of any Defendant to the fleet in Execution of any judgement, or otherwise in Court, and for making a copy thereof for the Warden of the fleet, containing the cause of the commitment, 12 *d*

For the entring of every Commitment to the fleet, of any person yeelding himselfe in discharge of his Bail, and for the like copy, 12 *d*

Privy verdict.

For attending the Judge from his chamber to *Westminster*, to take a privy verdict tried at the Bar, 3*s.* 4 *d*

Rea. Record.

For reading the Record of a demurrer in Court or verdict, 12 *d.*

Bailes.

For taking baile in Court, 12 *d*

For

Admiſſion to Guardians. For entring of an admiſſion of an Infant to his prochin Amy, or Guardian in the Protonotaries remembrance, 12 d.

Copies of Iſſue and Jurors names. For the Copy of the Iſſue and Jurors names to be delivered to the Jury upon any tryall at the Bar, 12 d.

Trials at Bar. For reading of Evidences upon triall at the Bar of each Party, Plaintiffe and Defendant, 3 s. 4 d.

Satisfa. Record Diſcontinuance. Satisfaction. For entring of every ſatisfaction by ſpeciall warrant. *Recordatur*, and diſcontinuance. 8 d.

For every ſatisfaction by generall Warrant, 4 d.

For entry of every Will or Letters of Adminiſtration to inable an Executor or Adminiſtrat or to acknowledge ſatisfaction, and the entry of the ſatisfaction. 12 d.

Interrogatories. For every copy of Interrogatories depoſitions of perſons examined upon Interrogatories by order of the Court for every ſheet, 8 d.

Per breve de Privato, ſigillo.

Wolſely.

Fees of the Upper Bench.

A note of Fees due, and time out of minds used to be paid to the Protonotaires, or chief Clerks of the Court of Upper Bench, and to their Clerks, as the same was presented upon oath by vertue of Commission in Apr. 1630 by 29 Attornies of the same Court, and hitherto taken:

Writs.

ORa Latitat.	5 s 1 d
Supersed.	*Prohibicon.*
igent in Appeal	*Consultacon.*
ring. in Attaint	*Proprietate probanda*
beas Corpus	*Distr. in detinue*
tiorari	*Inquir. de valore*
ccedend.	*Resum*
git	*Reattachmt.*
pæna	*Vesa. defend. in audita querela.*
ornhend.	*Here fac. sciam. & possession.*
hernam	*Respons. in attaint*
ond deliverance	*Rend. expon.*
stitucon.	*Bre Epo.*
refacias	*Mittimus.*
minucon	
bello hend.	

All these are accountable for to the Protonotaries, *viz.* For every one two shillings, at of which they allow the Clerks for writing foure pence-

Venire

Venire fac. *corpus*
Distring. Jur. *Averm. versus vic.*
Ali. & plur. cap. *Fieri fac.*
Casa. *Testat. si fac. & casa.*
Inquir. de Damnis. *Distr. nuper vic.*
Habeas corpus sur cepi Non omittas.

For every of these besides the Seal, 6 d. And for every *Deliberat de recordo*, 4d. And for the *Jura* of the *Distr.* of *Nipri* 4d. But all these have been alwayes to the Protonotaries Clerks, and are not accounted for to the Protonotaries.

In every Action wherein the *plt* recovereth damages to the value of 13 l. 6 s. 8 d. He payeth 12 *d.* in the pound for damages cleere, when the judgement is signed.

Upper Bench fees for Entries.

FOR every Deed how short soever, 1 s.
For every Action of Trespass, 1 s.
For every not guilty, 1 s.
For every justification in Trespass, 2 s.
For every replication, 2 s. 8 d.
For every Action of the case not above three sheets, 2 s.
For every generall Issue to it. 1 s.
For every Ejectione firme, 2 s.
For every Declaration in appeal, 2 s.
For every generall Issue therein, 2 s.
For every recogn sur Hecorp, for every defendant severally, 2 s.
For every Deposition upon all Prohibitions, 2 s.
For every Iudgement by Circumstant. 4 s.

Our

Out of which the Clerk is allowed. 8 d
every other Iudgment, 2 s
whereof the Clerk is allowed, 4 d
every diſmiſſion, 2 s
every commitment in Execution, 2 s
every ſatisfaction, 3 s
every apparance recorded, 2 s
every *Non proſ.* 2 s
every action of Debt, Detinue, or Treſpaſſe, 1 s
every generall Iſſue therein, 1 s
every condition performed, 2 s
every Replication to it, 1 s
a writing denied, and keeping of the writing, 2 s
every Iuſtification in Battery, 2 s
every *Audita quer.* how ſhort ſoever, 2 s
every ſpeciall Imparlance, 2 s
every generall Imparlance upon the Rea Roll, 12 d
every default upon Record, 2 s
ſuch a ſuggeſtion upon a prohibition how ſhort ſoever, 2 s
every Recognizance to it, 2 s
every writ of *Error* how ſhort ſoever 3s4d
entring the *Errours*, 2 s
entring *in Nullo eſt errat.* 2 s
every Diminution, 2 s
Abatement of a writ of *Errour* and liſe to ſue a new one, 2 s
entring of the ſame, 2 s
every Recognizance ſingle, or with condition, 2 s
every inrollment whatſoever, longer then three ſheets, 6 s 8 d
or the rate for a Roll on both ſides 6s 8d

For

For halfe a Roll,
For every Bail by Recognizance,

Upper Bench Fees of Clerks and Attornies

FOR their fee in every cauſe for e
Terme,
For thir fees at every *Nipri.* and inquir
damages.
For their fee in every Appeale, and A
every Term.
For drawing every Declaration not exc
ing a ſheet.
For every ſheet above one,
For drawing evey action on the caſe
covenant, how ſhort ſoever,
For drawing every Ejectment,
For every ſheet ingroſſed in Parchment
For drawing a Surmiſe upon a Prohibit
every ſheet,
For drawing ſpecial pleadings, every ſhe
For copies of Declarations, Pleas or o
things, every ſheet
For continuing every cauſe every Term
For entring all things aboue three ſheet
very ſheet,
For every Judgment by circumſtan.
For making every Baile,

For making every Bil of Middelſex, *diſ*
uper vic. and *Hecorp. ſur corpus per prec*
thereupon,
For making every *He corpus ad fac. becm*
privileg certiorari, precedend. elegit &
fac. poſſeſſionem, beſides 4d allowed b
Prothonotarie.

For every sheet in a VVrit of Inquiry, Prohibition, Consultation, &c. 4 d.
For entring of every *Scire fac.* 1 s

Fees received by the Secundary.

FOR taking the acknowledgement of a Deed in Court, 1 s.
For signing every Iudgment by confession, *nihil dicit, verdict & demurrer.*
Also for acknowledgement of every Deed, for every Iudgement pronounced in open Court, every Rule to alter a Visue, for every Rule, for a Prohibition, Consultation, Attachment, &c. He receiveth for the poors Box, 1 s.
For allowance of a Writ of *Errour, coram nob. residen.* 2 s
Thereof to the Box, 1 s.
For an allowance of an *Audita querela,* 2 s
Whereof to the Box, 1 s.

Upper Bench Fees.

FOR every common Baile, 1 s. 2 d.
For a special Bail, upon a *habeas corpus, Certiorari,* or attachment, 4 s. 1 d

Fees received by the Secundary for the Judges.

FOR every *Habeas corp. ad fac. & recipiend,* 4 s.
For every *Procedendo,* 4 s.
For every *Certiorari* to remove a foreigne attachment, 4 s.
For a *Procedendo* ther upon, 4 s.

For

For every *Habeas corp. cum privilegio*, 3 s.
Out of every *Latitat* they have, 8 d

Fees received by the Judges Clerks.

FOR every *warrant* for a *Habeas corp.* or any thing to which the Iudge putteth his hand in the Term time, 1 s
And in the Vacation, 2 s
For the acknowledgment of a Deed which he saith is for his Master, 6 s. 8 d.
And for his own fee, 2 s
For taking the Depoſition of witneſſes upon a Suggeſtion for a Prohibition for every witneſſe, 6 s. 8 d.
And for his own fee for every witneſſe, 2 s.

Fees paid the Clerk for the Papers.

FOR copying every ſpeciall plea, every ſheet, 4 d.
For making the paper book either iſſue or demurrer, every ſheet, 8 d.
For entring into his book every Record to be read in Court, 1 s.
For entring into his book every cauſe, to hear counſel on both ſides, 1 s.
For entring every tryall at Barr; 1 s.

The Keeper of the Poſteas.

HAth for the receiving, marking, keeping and delivery of every *Poſtea*. 4 d.

The

The Keeper of the files of Declarations.

HAth for the fyling, pying, and ſhewing the files of every Clark, for every Term 2 s

Fees paid to the Clerk of the Rules.

FOR entring every rule, except generall rules for anſwer, 4 *d*

For a copy of every rule, 4 *d*

For every generall rule for anſwer, being above three, 2 s

For every rule given in Court, with a copy for a Prohibition, or conſultation, he taketh 12 d. and the due is but 8 d which hath been taken not above 25 yeers. 8 d

For every rule with a copy given in Court the laſt day of a Term he taketh 12 d whereas the due is but 8 d. which hath been taken this two or three yeers. 8 *d*

For every copy of a rule after the continuance day he taketh 8 d. whereas the due is but 4d. which hath been taken this two or three years. 4 *d*

All ſuch Affidavits as are read in Court he claimeth this two yeers, or thereabouts to have the keeping of them, and taketh for copies both of Plaintiffe and Defendant at his own diſcreion, which formerly hath not been.

Doggetmaker.

THE Secondaries Clerk, for making and keeping the Remembrances of Entries &c. hath of every Clerk, every Term,

Keepers of the Bailes.

FOR entring the common Bailes in Parchment Rolls every Terme, every Clerk of the Office giveth what he pleaseth.

Keepers of the Rols of Writs.

FOR carrying the Rols of the Writs the Hall, and the Office, he hath of every Clerk every Term, what he pleaseth.

Fees paid to the Custos Brevium *and his Clarks.*

FOR every record of *Nisi prius* in a Action of Trespasse, 4s 6
For every other Rerord how short soere

For every full press of *Nisi pri* or *Mi-mus*, 6 s. For every *Nisi Prius* out of Crown side, 6 s.
For every full presse there, 6 s.
For every *Nisi prius* upon an Inditement murther, for every name that pleade to Issue, 6s.
For every short Exemplification in Tr passe, 1
For every Exemplification containing large skin
For the like in the Crown side,
For every Exemplification in *Ejectione mc*, 13 s.

For filing a Writ being a *Poſt diem* upon the *Angl.* 4 d.
For all pt. *Terminums* at any time after the firſt week ended in the ſecond Term, 1 s 8 d
For every *Warrant* of Attorney in muther, 1 s
For every Sheriffs *Warrant*, 8 d
For every other *Warrant* of Attorney, 4 d
For every ſearch for a Roll for ten years laſt paſt, 6 d
For every ſearch above ten years laſt paſt, 3 s 4 d
For ſearch for Rolls for the ſixe laſt Terms, 0 d
For ſearch of every file of Declarations, Bails, Judicial and other Writs after ten years, 1 s 4 d.
For the copy of every ſheet between Party and Party 4 d
For a copy of a Deed inrolled, for every ſheet, 8 d
For a file of the *Angl.* for every Term after one, 4 d
For the copies of every *Writ* or *Appeale*, every ſheete 8 d

Fees now paid to the Cuſtos Brevium *his Clarkes*

FOR writing every *Niſi prius* or *Mittimus*, being but one preſſe, 1 s 6 d
For every preſſe more then one, 1 s
For writing every Exemplification in Treſpaſſe or Ejectment, 3 s 4 d
For writing of every larg skin of Parchment Exemplified, 6 s 8 d

The fees for writing every *Niſi prius* or *Mittimus*, were uncertain untill about *Anno* 2. *Jac* And then it was ordered by the Judges that the Clarks ſhould have for writing of the firſt preſſe, 1 s 6 d And it more then every other preſſe, 12 d And every full preſſe to contain 60 lines.

Fees claimed by the Cryer and Porter.

As Cryer.

FOR calling a Jury,
For every Oath given in Court.
For taking a privy verdict,
For every argument in Law,
Fnr every wager of Law,
For every admiſſion to a Guardian,
For a Baile taken at the Bar,
For calling a Nonſuit,
For calling the *Record.*
For calling a default,
When a Pardon is pleaded,

As Porter.

FOR every tryall at Bar,
For every privy Verdict,
For ſummoning the Wager-men,
For a baile taken at Bar
For a *Record* called,
For a default called
For a pardon pleaded,
For a diſcharge of a *Reſcous*,
For a Baile taken in Court,

Of

Of all these Fees mentioned and claimed by the Cryer, and Porter, these following have been paid as due, during the time of our knowledge.

As Cryer

FOR calling a Jury,	1 s
For swearing every witnesse,	4 d
For a wager of Law,	1 s
For a Nonsuit,	1 s
For a default of a Record,	1 s
For a *defecit de lege*.	1 s

As Porter

FOR summoning the wager-men,	3 s
Also the *porter* receiveth more for the wager-men, where the Defendant wageth his law, or is ready to wage it,	1 s

Fees received by the Clark of the Errors immediately after the Sta. 27 Eliz.

FOR the Lord cheife Iustices fee for the allowance,	17 s 4d
For the Receipt,	5 s
For the Return,	2 s
For the Certificat of the first presse,	6 s
For writing the first presse,	2 s
For a *Supersedeas*,	2 s 7d

These fees amounting to 35 *s.* 3 *d.* were *paid upon the allowance of the writ and for the* Supersedeas.

FOR the certifying of the Record for every presse, besides the first, 6
For writing of every presse after the first; 1
For the Roll. 1
For marking *Nonpros.* upon the Roll, 5

Also immediately after the making of the Statute of An 3 *Iac The fees taken for the Bail were as followeth upon a Writ of Errour.*

TO the prothonotaries for the Recognizance, 2
To the Judges Clark, 1

Fees upon a Writ of Errour.

FOR making the Baile 4
For drawing and entring the Recognizance, 3

Now, and for the space of thirty years last past, he hath taken upon the reciept of every writ of *Errour* and *supersedeas* in a grosse sum 2 li. 6 s 8
Also for certifying every presse besides the last, 6 s 8
For writing every presse besides the first,
For every *Supersedeas* besides the first, with the Seale, 9 s 3

The

These Fees last mentioned, were set downe by Sir John Popham, *late Lord chief Justice*; Ex relatione Edi. Page cler. Error, *but we do not certifie it upon our knowledge.*

ALso he taketh for every baile in grosse sum, 19 s. 4d.

For every Writ of Errour, *Tam in redditione judicii, quam in adjudicatione executionis*, he taketh double fees.

The Marshals Fees as they were certified by Sir Wil Knowls *Knight, sometime Marshal of the Kings Bench.*

Primis, for inlargement of evry prisoner, which is termed his admission fee, 10s

Also he demandeth of every prisoner upon his inlargemeut, a fine, for not wearing irons.

For execution in every pound, 3 d

For actions in every pound, 1 d. ob

The Marshall taketh for every dismission more then the former fee of ten shil. 8s. 8d

The Deputy Marshal and Marshals men, take for every prisoner that is committed in Court, 5 s 6 d

And for every prisoner committed from the Judges Chamber, 2s 6d

The Deputy Marshall taketh for the allowance of every *Habeas corpus*, 2s. 6d

The Clerk of the Fines.

THere was an Office invented and erected about 6 *Jacobi*, whereby is taken upon the filing of every declaration in debt, where the debt is above 40 l. and not above a hundred Marks, 3s 4d. And above a hundred marks, and not above a hundred pound five shillings, and after the same rate, and also in every action on the case, and trespasse for goods, where the damages are layd above forty pounds the like rates, so that the Plaintiff or Defendant be not a person priviledged, nor the defendant in *Custodia Marr.* whereas before 6 *Jac.* in all our memories, no such monies were paid, or demanded.

Fees for trials at Bar, taken by severall Officers.

THe Cryer for calling the Jury, 2s
For swearing every Witnesse, 4d
The Porter for keeping the doors, 5s
The Cryer for a *Non suit*, 2s
The Deputy Marshall, 2s
The Tipstaves or Marshals men for a verdict, *sedente curia*. 8 s. 6d
If the Jury lye together all night, 17s 8d
The Judges foot-cloathmen, 12 *d* a peece, 4s
The Secondary receives for a verdict in Court, 3s

And for a privy verdict, 13s 4d. which he saith is thus divided (*viz*) the Judge that taketh the verdict, 6s 8d. to the Secondary 2s. and the rest being 4s 8d, among the Officers that attend. 0s

Of all the Fees mentioned, we present these following to be due.

To the Cryer for calling the Iury, 1s
For swearing every witnes, 4d
For calling a *Non suit*, 1s
To the Deputy Marshal, 2s
To the Porter for keeping the doors, 1s
To the Secondary, for taking a verdict in Court, 2s
To him for a privy verdict. 13 s. 4d
And now they take no other Fees then these last mentioned.

VVe pay into the Crown Office for estreating every amerecement, 1s

Also there is paid to the Secondaries Clerk by every one of the Protonotaries Clerks every Term that he faileth to bring in his Rolls within twenty four dayes next following after *Trinity*, *Michaelmas*, *and Hillary Termes respectively*, and within ten daies next after *Easter Term*, 12 d. whereas formerly they had time until the esoyn day of the next Term, to bring them in without paying any fee.

Also there is paid to the Secondaries Clerk for the filing of every common baile, after six dayes, after every Term over and and above the fee, 4d

The Table of which severall payments last mentioned is remaining in the Kings Bench office.

Fees due and received by Philizers.

FOR every *Cap. Alſ. Plur. Exigit. Proclama. & Diſtring.* in Treſpaſs,
For every Exigent and Proclamation *Replevin*,
For every *Pone. cap. Alſ. Plur. Teſtat. in Replevin*,
For every *Superſed.* upon the mean proceſs aforeſaid,
For every *Cap. Alſ. Plur. Teſtat.* and *Exigi* in *Truſ. ſup. caſum* Action on a ſtatute *Rap cuſtodie Truſ. contra formam ordinationis*, Ejectments and ſuch ſpeciall writs

For the Proclamation thereupon,
For the *Diſtrin.* thereupon,
For every *Cap. Alſ. & Plur.* in appeale of *Majhem*,
For every *Cap. Alſ. & plur.* in appeale of Robbery,
For every name in every *Cap. Alſ. & plur.* in appeal of Murder,
For every Proclamation in every appeale

For every generall *Cap. utl. & delibatur recordo*,
For every ſpeciall *Cap. utl. & delibatur recordo*,
For every VVrit of *withernam, ſecond deliverance, and return habend. before avowry.*
For every *Venire facias.*
For every *Diſtring. Jur. delibat de record. & jur. Niſi prius*,
For every *Subpœna* upon iſſues by original

For entry of Declarations in treſpaſs by original, 1 s.

For entring not guilty thereunto 1 s
For entring every Ejectment and action on the case not above three sheets. 2 s
If longer then for every sheet 8 d
For every general imparlance, 4 d
For every speciall imparlance, 2 s
Copies of Writs of Attaint, before judgement per sheet. 8 d

Fees due upon Tryals at Guild-Hall, *to the Officers of the Court.*

TO the Clerk that reads the Record and Evidence, 1 s
To the Associate; 1 s
For every default, 2 s 4 d
To the Cryer. 1 s
For swearing every witness 4 d
The Marshall, 2 s
The foot-cloath; 1 s
The green-cloath, 1 s 6 d
The Door-keeper, 1 s
The Hall-keeper, 1 s
The Jury men. 8 s
Cryer-men every one 4 d
For summoning & keeping the Jury 4 s 4 d
Lights, 1 s
Bar-keeper, 1 s
Return of the postea, 2 s

Also the Associate taketh in every cause where the Plaintiffs Attorny is not present, and of every Defendant which appeareth, and hath not his Attorny in Court, for a warrant of Attorny. 4 s

The Exchequer.

This Court hath formerly been a Court of much practise and in great esteem; but of late since the Revenues of the Crown have been sold, there is but little busineſse to what formerly, and very likely to be far lesſ, when there will be littel or nothing at all left of what related to the Crown save onely the Cuſtoms, Impoſt, Tonnage and Poundage.

The cheif Judges of this Court are the Lord cheiſe Baron, & three other Barons of the Coif, with whom alſo ſits one other who hath the name of a Baron, but hath no voice in Court as to any buſineſſe, ſave the taking accounts of Sheriffs, Auditors, Bailiffs, Receivers, *&c.* The ſubordinate Officers are,

1 The Kings Remembrancer, now called the States Remembrancer, in whoſe Office are ſeverall Attornies.

2 The Lords Treaſurers Remembrancer, & in that Office likewiſe ſeveral Attornies.

3 The Clark of the Pipe:

The Comptroller of the Pipe, and ſeverall Clarks there.

4 The Clark of the Office of Pleas: in his Office there are likewiſe ſeverall Attornies.

5 The Clark of the Eſtreats.

6 The forrain Oppoſer.

7 The Auditors of the Court which were anciently many.

8 Tellers, and one of them in cheife, and under-Tellers their Subſtitutes.

9 The Clerk of the Tallies.

10 The

10 The Chamberlain of the Court.
The cheife Cryer, and ſeverall other Cryers.
The Uſher, and Porter of the Court, and Court-keeper.
The Keeper of the Records.

This Court of Exchequer hath in it a divers way of proceeding.

As firſt There is a courſe of proceeding ſutable in moſt things to the common Law, proceedings in other Courts, and that is, of their (*Quo minus*) out of the Office of Pleas, which writ was anciently to be granted to ſuch Party only, who was either Tenant or Debtor, or ſome waies accountant to the King; and therefore the end of the writ concluds, that he is for default of the Defendant, giving him ſatisfaction, leſſe able to ſatisfie the King; but at this day the practiſe is known generally in all caſes almoſt, but more eſpecially in *Wales*, where no Writ out of the Upper-Bench, and Common-Bench lies, ſave only a *Capias ut legatum*, and this Writ which ſo far relate together, as far they both pretend to be by way of Prerogative for the King: The rules formerly given for proceedings in common Law in upper-Bench, &c. will ſerve you for this,

The Exchequer Chamber.

This Court is as it were the Chancery of the Exchequer, in which ſits as the cheife Judge or Officer, formerly the Chancellour of the Exchequer, being aſſiſted with the Lord cheife Baron, and the Barons of the Coife; and now that there is no Chancellour, the Lord cheife Baron and the reſt of the Barons, and the procedings had there before them doe much reſemble the Proceedings in the Chancery, and

and therefore refer you to what you will find follo-
ing, of the Proceedings in the Court of Chancer
which may be some guide to you in this.

The whole practise and proceedings which are g
nerall in use at the Exchequer Bar, doe relate for t
most part to the two Remembrancers of the Cou
which as I told you before, were the Kings or Sta
Remembrancer, and the Lord Treasurer or Comm
tee of the Revenue Remembrancer.

There hath been anciently very much businesse, a
that very various in the Kings Remembranc
Office, relating to the Debters, Tenants, Farme
Receivers, Accounttatns, Bailiffs, and Sheriffs; f
Debts or Duties due to the King, *&c.*

In the Treasurers Remembrancer were wont to
all licenses of Alienation pleaded, and all Proce
issue out for the fines non paid upon them, and also
Proces for not payment of respite of Hommage, &
And these severall Offices do in many things also fo
low the practise of the common Law.

The difference between this Court, and the Cou
of Upper Bench and common Bench, in po
of appearance at the beginning of a Suit, take
followes.

In the Exchequer for the generallity, the proce
a *Subpœna* to which the Defendant may appeare eith
in person, or by his Atturney, so that he put in pledg
to answer the matter; and if the appearance bee h
by Attorney, then the Defendant so appearing,
Sureties must be bound by Recognizance, with co
dition, that he shall render, *&c.* if the Defenda
in the Suit for whom they stand bound, be conde
ned, *&c.*

This Bail or Recognizance must be alwaies tak
befor a Baron in tht Court, and not in his Chambe
is in other Courts most usuall.

Exc

Except the matter be of great moment, one ſurety will be ſufficient.

Where the Plaintiffe is pleaſed, the hand of the Defendant may be ſufficient, whether it be a perſonall appearance, or by Attorney.

Here follows the Charge of the Subpœna, *together with the appearances upon it in the* Exchequer.

	l. s. d
Inprimis, The *Subpœna* and ſeale;	2-7
The Appearance upon it,	0 8
The Recognizance,	0 8
The copy of the Information at eight pence the ſheet.	
For entring the Baile if it be in a generall Iſſue,	5-0
If in a ſpecial iſſue for every half Roll,	16-4
To a Councellour for drawing the Plea in Bar,	10-0
For the Attornies fee,	3-4

Where there is an Inrolement made in the Exchequer, *the Fees are as follow.*

	l. s. d.
TO the Baron before whom the acknowledgement is made.	0-6 8

To

To the Mr. of the Office for his hand, 6s.
For every Roll, 3 s.
For the Attornies fee, 3 s.

Where an under-Sheriff is to passe his account in the Exchequer, the charge is as followes; some difference there may be, as the account may lye, but not much.

l. s. d.

FIrst, for the *Tales* upon payment of prof-fers, 0-1-
For the entry of the same *Tales*, 0-1-
VVhere the Sheriffe is dead, for the *Dicas clausit extremum*, whereby upon accoun execution is to be returned, 1-
For the warrant of Attorney, 1-
For the entry thereof, 0
For the Ushers fees, and the poor mans box. 1-
To the Comptroller of the pipe, 16-
To him more, in regard of, *&c.* 3-
To the Clerk to the Comptroller for sumn ons in regard of, *&c.* 5-
To the Clerk of the Pipe in part of his fee 1-0-
To the L. Treasurers remembrancer, 1-
To the forreign Opposer for charging of the green wax, and making the Scrowl thereof, 1-6-
To him for allowance of the wages of the Justice of the peace, 18-

To

To the Clark of the Eſtreats for the Portage of Books. } As you can agree.

To the under Clark of the Pipe for the like. } In like manner.

For the Preſident for the forrain account. } In like manner.

The fee in regard of the Juſtices of Aſſize for their yet, 10 l.

To the Attorney for the entry thereof, and other petitions. 2 l.

To the ſaid Attorney for his ordinary fee, for the whole year to receive the Writs and precepts, *&c.* 11.6 s. 8 d.

To him in regard of, *&c.* for every Term during the accounts till finiſhed, 3 s. 4 d

To his Clark in regard of, *&c.* 10s

The copies of the Sheriffs, Seiſures, according to the number of them-

The old ſeiſures for each, 1 s

The new ſeiſures for each. 1 s

To the clark in regard of, *&c.* 3 s. 4 d

To the Remembrances Office for each thereof, and for joyning the tales of profeſſors. 3 s. 4 d.

On the Lord Treaſurers Remembrances ſide for the like, 3 s. 4 d

For allowance of the ſame tales of payments of money in the Receit of the Exchequer, 1 s. 4 d

For the joyning of the ſame,

For allowance of the ſame, 1 s

For every day that is given to the Sheriff, in reſpect of his Accounts, 6 s. 8 d

For the entry thereof, 2 s

To the Vſher for Proclamation, when the Sheriff is ſaid to be caſt out of the Court, 2 s 6 d

For the *Quietus eſt*, the making and allowing of the ſame, 1 l

For the Baron for his fees, for the taking and allowing of the forrain accounts, 6 s. 8

To the ſame Baron for examining the Sheriffs Schedule.

The ordinary charge of paſſing another Account.

Firſt for the Delivery and Receipt of three Certificates, 1 s

For delivery of the Kings part of the Books of Extent to the Auditor, 6 d

To the Auditors man for a bagg, 6 d

For a VVarrant of Attorney, 8 d

To the Teller for receiving of the money, and making a Bill thereof. 4 d

To the Auditors man for allowing the certificates 1 s. 6 d

To the Auditors man for ingroſſing the Accounts 4 d

To the Barons man for receiving and allowing the VVarrants of Attorney, 2 d

For entring the Accounts on the Kings Remembrancers ſide, 1 d

For the like entry with M. 1 d

For joyning of their two Tales, 8 d

For the *Quietus eſt*, 3 s. 4 d

For entring of the *Quietus eſt*, 2 d

For the Attornies fee, 3 s. 4 d

Thus much ſhall ſuffice to have ſpoken of the Exchequer and of his Proceedings, and Fees relating to Sheriffs.

the next place take the fees of the Sheriffs themselves, as in the Execution of their Office.

*I*N *primis* for the return of a *Nichil*, or *non est inventus.* 4 d.

But in *Scire facias* they take, 1 s.

For making a Warrant upon ordinary Proces, if be directed to the ordinary Bailiffs, then for every ame, 4 d.

In many Counties they take far more, in ſome 6 d. in ſome more.

If the Warrant be directed to a ſpeciall Bailiff or ailiffs, then for every name, 2 s

For the Arreſt of every Defendant, 1 s.

This ſhould be paid by the Plaintiff.

For making the Bond of appearrance, wherin e Defendant with his ſureties is bound to ap- are in Court, at the day of the return of the rit. } 4 d.

They take 1 2 d. and more in ſome places.

For the return of a *Cepi corpus*, 4 d.

For the return of an Exigent, 1 s.

For the return of a Proclamation, 1 s.

For the return of a *Venire facias*- 1 s.

They now take in moſt places, 2 s.

For the return of a *Habeas corpus*, or *Diſtringas* 2 s 4 d.

For a Replevin either in the County or otherwiſe, 2 s.

For the return of a *Recordari* 1 s.

For the Return of an *Accedas ad curiam*, 2 s.

For the Return of a *Diſtringas ſuper vicecomitem*, 2 s

For the allowance of a *Superſedeas*, if it be after e returne of the Exigent, 1 s,

They pay more now in many Counties,

For the executing of a Writ of inquiry of waſte,
For the executing of a VVrit of inquiry of Damage in Treſpaſſe.
Treſpaſs upon the caſe, *&c.*
For the excuting of a *Liberato* upon a ſtatute of Recognizance.
For the Fxecution of an *Habere facias poſſeſſionem*, or *ſeiſinam* upon an *Ejectione firme*, a writ of right, of making Partition, *&c.* of *Dower*, *&c.*

} As you can make agreement with the Sheriff.

For the executing of an *Elegit*, and for the inquiry upon it.

For the executing of a writ of forcible Entry, or holding with force, whereupon the Party moved, is to be reſtored by the Sheriff to his poſſeſſion.

For the executing of a writ of Inquiry upon aſſault and Battery.

Vpon a Reſcouſe, and many other too long here to inſert. The like as before.

For the returning of a *Mandavi Ballivo Libertatis &c.* 4

Vpon the ſerving of an Execution for money, or other Debt or dammages.

The Sheriff hath poundage allowed him, and by a generall Rule allowed by the Statute in Queen *Elizabeths* time, ſee the Statute what it is.

There are many other fees incident to the Sheriffs in many Actions and otherwiſe, which in reſpect the Actions themſelves are moſt of them out of uſe, are not well known; and indeed a man had need be well experienced in the Office of an Under-Sheriff, to know both what fees he ought to receive, and what he ought in the Exchequer to pay.

The Court of Upper-Bench comes next to be treated of wherein we ſhall be the briefer, in reſpect that many actions treated of at larg before, in the Court of common Bench, are here alſo brought, and all that differences their proceedings, is for the moſt part matter of forme.

THE Court of Upper-Bench conſiſts of a cheif Juſtice, and three other Judges.

The ſubordnate Officers are as follow.

The cheife Clark of the Court, or Maſter of the Upper-Bench Office, whoſe place is executed by his Secondary for the moſt part, or his Clarks under him, who writ e all pleadings, and Declarations, and other proceedings upon Record, and are accountable to him for the ſame.

His Deputy alſo ſignes all *Latitats*, which is the firſt writ where by a Suit is commenced: And Writs of *Alias*, *Plures*, *Capias*. *Elegits*, *Habeas Corpus*, *Proceſſando*, *Heabeye facias poſſeſſionem*, *Certiorare*, *Diſtringas* ad *illivo Diſtringas* againſt late Sheriffs, *Returno Habendo*, *Capias in Withernam*, ſecond deliverance, and ſome others, He alſo keeps the remembrances, of all Records, whereby you may find out any Record with little trouble, eſpecially if you know the Terme when it was entred, and the Attornies name: and alſo all Writs returned, and *Poſteas*, and Writs of Errour are kept and filed in his Office, and alſo common Bails, and eſpeciall Bailes, after they are accepted of by the Plaintiff or his Attorney, are likewiſe filed and entred upon Record in his Office.

Secondly, The *Cuſtos brevium*, his Office is to file all

all originall Writs, and other Writs, wherein you proceed againſt any perſon you intend to outlaw. And alſo makes up all Records of *Niſi prius* for tryals at the Aſſiſes in the ſeverall Contries, and hath ſeverall Clarks under him, who write the ſame; but many times the Plaintiffs Attorney or the Defendants Attorney, if you go to triall by *Proviſo*, write the ſame, that he may diſpatch his Clients buſineſs the ſooner, for which you pay for every preſſe, which is to contain ſixty lines, 6 s 6 d.

The ſecondary to the chiefe Clark, he alwayes attends the ſitting of the Court, for to examine buſineſſe, which is referred to him by the Judges; and afterwards makes his report thereof, how the caſe ſtands: He alſo ſignes all Judgments and Taxes coſts thereupon, and gives all rules to anſwer and reply, and to go to tryall by *Proviſo*, and many other and uſually reſolves all doubts and queſtions of the other Clarks: And if any difference ariſe between any of the Clarks, for matter of practiſe; it is uſuall with them that are fair practizors, to refer the ſame to him for to determine, and not to trouble the Court with unneceſſary motions, and expend the Clyents money in vain, which may that way be ſaved.

The Clark of the papers, his Office is to make up all ſpeciall pleadings and Demurrers, which the Plaintiffs Attorney moſt commonly ſpeaks for, and afterwards by vertue of his Office, gives a Rule upon the ſide of the paper-Book, for the Defendants Attorney to bring the ſame to him again, to be entred within four dayes, or elſe judgment to go by default.

Keeper of the files of Declarations, with whom after they are ingroſſed, in Parchment, and continued on the back, from the Term you declare, till come to an iſſue, are filed,

Keep

Keeper of the Signe and Seale for the bills of *Middlesex*, who keeps a book, containing the Plaintiffs and Defendants names, and where you may search for any appearance, or for any Writ that is taken forth.

The Clark of the Rules, whose office is to attend the Court, and take short notes of all rules and orders that are made in Court (except those which belong to the Crown Office) and afterwards draws the same up, and enters them in a Book at large, for which you pay 8 d. and for the copy of every Rule 4d. if it be of the same Term, otherwise you pay 8 d. He also files all *Affidavits* that are used in Court and hath the benefit of making Copies of them, for which you pay for each sheet 4d. and with him you are to give all rules of course, as Rules upon *Cepi corpus*, *Habeas corpus* for a *Procedendo posteas*, Writs of inquiry, and such like.

Phillizors, one for each County in *England*, who make out all Writs, wherein you intend to proceed by Originall, and so to the Outlawry except the Original it self which you are to bespeak of the Cursitor of the County, where you intend to lay your Action, in such manner as you bespeak Originals, which are made in the common Pleas. And they have the benefit of all VVrits and entries thereupon, and allow the chief Clark nothing for the same.

The Marshall of the Upper-Bench, who hath the custody of all Prisoners, who are sued in the Court, like to the Guardian or VVarden of the Fleet, which is a Prison, properly belonging to the common Bench and Chancery; and every one that is sued and Arrested in this court of Upper-Bench is supposed to be in custody: for you cannot declare against any man, who is arrested upon mean Process, in any County or city, and he remain in prison there, for

want of baile, untill he be removed by a *Habeas Corpus*; and alwayes either he himself or his Deputy or Servants, attend the Court for that purpose to take prisoners, who are committed to their Custody.

Clark of the Errours, he allows all VVrits of Errour, and makes *Supersedeas* thereupon, into what county you please to have them.

Criers, who alwayes attend upon the court, either to call *Non suits*, give Oaths to witnesses, and Jury men of tryals, or to any others whom the Judge shall direct, and at the end of every Term they do adjourne the Court.

Porter who is to bring the Records out of the Office, when they are to be used in Court.

This Court of Vpper Bench holds plea in all Actions of Debt, Detinue, Covenant, Account, and all Actions of the case, either upon promises, or for scandalous words, or for speciall nusance, *&c.* Trover and Conversion, and many other like, *&c.*

The course of proceeding there is by way of *Latitat*, as their first process, if the Action to be brought, or the party to be arrested in any other County then *Middlesex*.

If in *Middlesex*, then you take out a Bill of *Middlesex*, with any Clark of this Office, for which you pay 1 s. 6 d. and then you are to carry it to the under Sheriff of *Middlesex* his Office, who is to make out a Warrant upon it, for which he hath 4 d. and then you imploy what Bailiff you think fit, for the Arrest, except your warrant be directed to the Bailiff of any particular Liberty, and then you are to imploy one of his Bailifs.

If it be a *Latitat*, it supposeth a Bill of *Middlesex*, and that the Party cannot be found in the county of *Middlesex*, as it appears by the latter end of the writ, where it is said, the Sheriff of *Middlesex* returns that

hat he is not found within his Bayliwick, but that e lyes hidden in another county, and therefore ommand is given to the Sherif of that other coun-y, that he take him, *&c.*

This Writ or Bill of *Middlesex*, I conceive, is in he nature of the Originall in the common Pleas, which warrants the *Capias*, and happily may have ve-y anciently been in use for that purpose, for that o-herwise twere vaine to insert those words of the Sherif of *Middlesex*.

The form of a Latitat *is as follows.*

Latitat.

THE Keepers of the Liberty of England, *by Authority of Parliament, to the Sheriff of* E. *greeting. Whereas we have lately commanded the Sheriff of the County of* Middlesex, *that he should take* A. B. *if he might be found in his Bayliwick, and him safely keep, so that he might have his Body before us, in the Upper Bench at* Westminster, *the Thursday next after fifteen dayes of* Easter. *to answer* C.D. *in a Plea of Trespass, And the said Sheriff of* Middlesex, *at that day returned unto us, that the said* A.B. *is not found in his Bayliwick; whereupon on the behalfe of the aforesaid* C.D. *in the court before us, it is sufficiently testified, that the said* A.B. *doth lurk and sculk in your County; therefore we command you, that you take him, if he shall be found within your Bayliwick, and him safely keep, so that you may have his Body before Us in the Upper Bench at* Westminster, *on Wednesday next after three weeks of* Easter, *to answer the said* C.D *in the Plea aforesaid, and that you have there then this Writ; Witness* H. Rolle *at* Westminster, *the seventeenth day of* April, *in the year of our Lord God* 1651.

This

This writ is usually 4 s. 1 d. some take 5 s 1 d. And if you cannot arrest the Party upon this, then you may have it renewed as followeth.

Alias Capias.

THE *Keepers*, &c. *to the Sheriff of* L. *greeting*: *We command you, as formerly we commanded you, that you take* A.B. *if he shall be found within your Bayliwick and him safely keep, so that you may have his body before us in the Upper Bench at* VVestminster, *on Saturday next after the Morrow of the Ascension of our Lord, to answer* C.D. *in a plea of Trespass. And that you have there then this writ; witness* H. Rolle *at* VVestm. &c. VVight wick.

This VVrit is XIII *d*. but they usually take 2 s. 1 d.

The Plures Capias.

THE *Keepers*, &c. *To the Sheriff*, &c. *We command you, as many times we have commanded you that you take* A.B. &c. *as in the Writ next before.*

This writ is likewise XIII d. but they take 2 s. 1 d.

Bill of Middlesex.

MIddlesex *ss*. It is commanded to the Sheriff that he take *A. B.* if *&c.* and him safely *&c.* So that he have his body before the Keepers of the Liberty of *England*, by authority of Parliament in the Vpper-Bench at *Westminster*, on VVednesday next after the Month of *Easter*, to answer *C.D.* of a Plea of Trespass, and that he have here then this Precept, *&c.* by Bill *Wightwick*.

These VVrits you may have renewed every Term, until

ntill you get the party to be arreſted. But if the *Latitat* remain unrenewed for five Terms, after you have taken it out, then you muſt have a *Latitat de novo*, for that you cannot renew the old.

Upon any of theſe Proceſſes, if any of the parties to be arreſted, dwell within a Liberty, you muſt get the Sheriff to return a *Mandabo Ballivo* to your Proceſſe and upon that the courſe is to have a *Non omittas, &c.* For which you pay 2 s. 4 d.

Where upon this, or any the other writs, the party or parties be arreſted, and have put in bond for his appearance to the Sheriff, you muſt pay the Sheriff 4 d and he will return you a *Cepi corpus*, upon which if the party do not appear at the return of the Writ you may give the Sheriff a rule to bring in his Body, on pain of 40 s. *&c.* which coſts 4 d. and then if he do not come in and appear, you may have a *Habeas Corpus* upon the *Cepi corpus*, which coſts 2 s. 4 d. If the Sheriff will not return this writ of *Habes*, you may amerce him as before; if he doth return the writ and brings not in the Body, he can return nothing but a *Languidus in perſona*, and upon that, you may have a *Duces tecum licet languidus, &c.* upon the like price; or elſe after the Party is arreſted, you may have a *Habeas corpus*.

At the return of all or any of theſe you may amerce the Sheriff, and he ſhall pay it after thoſe rules given in the Upper-Bench.

If you will extreat your Amerciaments into the Crown Office, the charge of every rule extreated is 2 s. 4 d. unextreated 4 d. and in this courſe you may both amerce the Sheriff, and proſecute till ſuch time as he doth appear, but if their be any great Amerciament, the Defendant will appear for fear the Sheriff ſue his Bond: And after the Amerciaments are returned into the Crown Office, if they be

be not certified and returned into the Exchequer, which is once in every halfe year, where they are extreated before that time, if you be ſued upon the Sheriffs bond, you may upon motion of the Court if the Plaintifs Attorney (to whoſe Client the Sheriffs bond is commonly aſſigned) will not conſent otherwiſe, that you are content to appear as of the ſame Term the firſt Writ was returnable; and to accept of a Declaration, and not to delay the Plaintif in his Suit: the Court will uſually order the Suit upon the Sheriffs Bond to ſtay, or if the Amerciaments be extreated, then upon the ſame offer, and alſo to take of thoſe Americaments, the Court will order the like.

And when any one intends to appear, he muſt file a Baile with the Maſter of the Office, fairely written in in Parchment, the forme whereof is as followes.

If it be a common Baile thus.

A. B. of *C.* in the Countie of *D.* Yeoman. delivered into Baile upon a *Cepi corpus.*

To *John Doe* of *London*, Yeoman, and *Richard Roe* of the ſame Yeoman, at the Suit of *E.* F.

If ſpeciall Baile upon a *Habeas corpus*, then you muſt ſay (ſuch a one) naming the Plaintiff is delivered into Baile upon a *Habeas corpus*, to ſuch perſons naming his Baile, (inſtead of *John Doe*, and *Richard Roe*) at the Suit of the Plaintif in the plaint not naming the Defendant, as in the common Baile, which muſt alſo be filed with the Maſter of the Office.

In

In what caſes you are to require and may ſtand upon good Baile.

IF the Defendant do appear, and he ſtand indebted to your client, either by Bond Bill, or otherwiſe, to the value of 20 l. or 10 l. you may force him to put in good Bail, if you miſtruſt his ſufficiency. But if it be in any action of the caſe, for words, though the party be nothing worth, and you are likely to recover great Damages, yet can you very hardly hold him to good Baile: yet in ſome caſes it hath been obſerved, that good Baile was required, as where one had made a Libell againſt another, who was a Magiſtrate.

In any Action of *Ejectione firme*, and in an Action of Treſpaſſe, good Baile is not inſiſted on, nor required; except in ſome ſpeciall caſes, then the Court will order that there be ſpeciall Baile.

Nor is there good Baile required againſt Executors or Adminiſtrators, in any Action brought againſt them; unleſſe in ſuch caſe where you can directly prove they have waſted the Goods, of the Teſtator.

If Baile be put in, either common or ſpeciall, at another mans Suit, a ſtranger may upon the Baile put in a Declaration, but then he muſt declare of the ſame Term the Baile was put in, which is not uſed in the common Bench. But the Party at whoſe Suit the Defendant was arreſted, may declare the next Term after the Defendants appearance upon the Baile.

But if it be eſpeciall Baile that he put in, no ſtranger ſhall take the benefit of it, although he declare of the ſame Terme.

If the Defendant appeare in his proper perſon,

you

you muſt declare within three dayes, otherwiſe he will have coſts.

If you have declared, and do not call for anſwer nor enter the Action within three Terms, after the appearance of the Defendant, the Plaintiff ſhall be *Non ſuited* and the Defendant ſhall have coſts.

And if you arreſt one in the County, upon mean proceſſe, and he is in the Sheriffs cuſtody there for want of Baile, for the ſpace of three Terms, and you doe not remove him into the cuſtody of the Marſhall, where he muſt be, before you can declare againſt him, the party arreſted may have a *Superſedeas*, and file common Bail.

The Declarations are uſually drawn by the Clarke of the Office, for they that are Clarks of the Office are to do the buſineſſe of thoſe which are Attornies at larg, and their names are only uſed as Attornies, but thoſe Clarks are in right of their being Clarks of the Office, Attorneies of the Court.

Their manner of practiſe is ſomething different, in reſpect of the delivery of Declarations, from that in the common Bench.

In the common Bench, the plaintiffs Attorney or Clark, hath the benefit of both Copies of the Declaration, both on the part of the Paintiff and Defendant.

But in the Upper Bench, the Declaration being drawn by the Plaintiffs Clark, the Defendants Clark calleth for it, or elſe it is delivered unto him and he maketh a Copy of it, and hath the benefit of it, and then the next Term after, or ſo ſoon as the Plaintiffs Clark calleth for anſwer, is to plead or to confeſſe the Action, or let it go by default, *&c.*

Their Declarations that are drawn, they ingroſſe ſeverall in pieces of Parchment, and upon the back of them they enter their continuances, from the

Term

erm that is within written, unto the very Term at they either confeſs the Action or plead to iſſue d that the Iſſue be entred upon Record, and after ſue is joyned, many times they deter the entring of e ſame, till the cauſe be tryed, which is otherwiſe the common Bench, which is beneficiall both to e Plaintiff, and Defendant, being they may in the ean time agree the buſineſs, and ſo ſave that arge.

In their Declarations they begin with the name of e Plaintiff, and ſay, that he complaines of the Dendant, very ſeldome naming of what place, *&c.* leſs upon a Bond where the *Alius dictus* muſt be ſerved, in the cuſtody of the Marſhall, *&c.* for ſo o Declaration ſuppoſeth every perſon they declare ainſt.

VVhen they come to mention the Bond, Indenre, or Bill, if in an action brought upon any ſpeialty, there they have (*Profert hic in curia, &c.*) the middle of their Declarations, whereas in the mmon Pleas they conclude their Declarations ey add underneath,

Pledges of proſecuting { *John Dove.* / *Richard Roe.*

Next that they add, I. B. *for the Plaintiff* C. B. *for the Defend nt.*

THE many and ſeverall Actions of the caſe before mentioned in the practiſe of the common leas, are much uſed likewiſe in the practiſe of this Court, and in thoſe Actions they may proceed to utlawry by originall, and ſo through their Philli-

zers

zers Office, in which cases, or in trespasse, or tres-passe or Assault and Battery, if a man be outlawed in that Court, he is half undon if he be a poor man for besides that it costs him 6 l. 13 s. 4 d. or upwards to reverse the Outlawry, he must although he live 200. or 150 miles distant from *London*, come in per-son (if he be able) to reverse it, and besides must pro-cure good baile; and in case he be impotent that he cannot travell, then there must be *Affidavit* made thereof, before a Judge, which done, he may re-verse it.

One may proceed to Outlawry in this Court, as well as in the common Pleas, in all cases, except in these four.

1 Debt. 2 Detinue. 3 Covenant. 4 Account but it is seldome made use of but upon good occasion that is to say, when the Defendant hath a good per-sonall Estate in Debts, Cattell, or Stock in his Grounds, and is hard to be taken and arrested: so otherwise Outlawries are but meer scare-crows, to disable both the Plaintiff and Defendant, in put-ting them to unnecessary charge, whereas upon a *Latitat* you may procure a man to be arrested presen-ly, and make him put in good Baile, which is all you can do upon an Outlawry, after three Terms space: And beside, upon a *Latitat* you may declare against the Defendant, in as many Actions as you please; whereas in the common Pleas, you must have for every Action, one originall, and if it be a Debt which exceeds 40 l. you must pay as before I told you, 6 s. 8 d. fine, and if 100 l. you pay 10 l. fine, and so proportionably; and as soon as you be-speak your Originall, before you have any benefit of your Suit, whereas no fine at all is paid in the Vp-per-Bench, and in the Vpper-Bench the Plaintiff hath longer time to declare, then is allowed in the com-mon

Common Pleas; (if the Defendant do not appeare in perſon) and then you muſt declare within three dayes after.

When the Plaintiff and Defendant are at iſſue, the Defendants Clark hath the benefit (as before of making the Declaration) ſo of making the Copy of the Iſſue for the Defendant, which is otherwiſe uſed in the Common Bench.

If there be eſpeciall Pleadings in any action by the Plaintiff or Defendant which either comes to Iſſue, or that there be a demurrer, then they carry the whole Book to the Clark of the papers, who giveth a rule to the Defendant in the Margent of the Book, to joyne in iſſue or in demurrer, and he maketh up the Books, and is paid eight pence a ſheet for the ſame, which is otherwiſe in the common Pleas where there the Plaintiffs Attorney hath that benefit.

The Clarks of the Office are to account with the Maſter of the Office, after the end of every Terme, for all Writs of Entries, *&c.* which they have had of that Term ſo proceeding.

After Verdicts and that they have the *Poſteas* returned, and that the Maſter of the Office hath ſigned Coſts (which he doth as he doth all other buſineſs in his Secondary) then they enter up their Judgments, every Clark his own, and ſo he maketh out his Executions, either againſt the body, which is commonly called a *Capias ad ſatisfaciend* or elſe againſt the goods, which is commonly called a *Fieri facias* or elſe againſt the Lands and Goods, which is called an *Elegit.* but if you once charge the body in Execution, you have no remedy againſt the Goods or Lands,

If it be an iſſue of any former Terme, that is entred upon the Roll, or of the ſame Terme then if they will have a Record of *Niſi prius*, they muſt have

it made by the *Custos brevium* of that Court, wh keepeth particular Clarks for that purpose, for the are to pay him for them, although for expedition th Attorney or Clark most usually makes them him selfe, and the *Custos brevium* seales them.

This Court of Vpper-Bench holdeth Pleas of th Crown, and to that purpose there is an Office calle the Crown-Office, and the Master of it called th Clark of the Crown; and here may be brought I dicements for all manner of Treasons, Murther, F lony, Breaches of the peace by Battery, *&c.* Breach the good behaviour, for perjury, all publick nusance appeales in case of murther may come, and here lik wise Informations upon penall Statutes are brough and here issues out *Certioraries*, to remove Indic ments from private Sessions, and hither are all Co victs certified.

They have belonging to this Office a Secondary, who s in Court, and takes notice of what Rules are made on th Crown side. They have likewise severall Attornies that Office. who have the business of the Country, as that Office divided amongst them, who intermedle not wi anything relating to the Court, other then in their ow Office.

How to sue upon a Statute Staple.

IF you would sue forth Execution upon a Statu Staple go to the Clark of the Statutes, and sh him your Statute, and he will make you thereupon Certificat, which being made and sealed by hi carry it to the clark of the Crown, (which is t Office whence all patents speciall issue forth) a upon the Delivery of the Certificate to him, he is make you your Extent, which you must after deliv

unto the Sheriff of the County where the Land lies who will by vertue thereof impannell a Jury to inquire and extend Lands, Goods, and Chattells of the Cognizer, and may by vertue thereof apprehend the Body, if, *&c.* The Lands being thus extended into the Kings hands, the Sheriff may keep untill you bring your *Deliberate*, which you are to have (upon your extent returned) from one of the Clarks of the Petty bagg; but it behooveth you to be very carefull how you sue forth of your *Liberate*, and that you do it not before you have fully informed your self what Lands or Goods there are in any other County, that you may extend, whereby fully to satisfie your Statute, for if you once execute your *Liberate*, upon that which was first extended, you shall never have execution of more, although you make an after discovery: And you are to deliver your statute into the Petty Bag office, before they will make you your *Liberate*.

How to sue upon a recognizance acknowledged before one of the Masters of the Chancery.

WHERE you will sue upon a Recognizance you must bring it to one of the Clarks of the Petty bag office in Chancery and he will make you out two *Scire facias*, directed to the Sheriff of *Middlesex*.

The first returnable of a return past, and the other bearing *Teste* of the return of the former; and returnable at a day to come, which you must get the Sherif of *Middlesex* to return, and having them returned, you are to brin them back to the Clark of the

Petty bag Office, and then retain one of the Clark for you and give the Defendant day to appear.

At which day if he appear, the Plaintiff is to declare, and the Defendant is to answer, and so proceed to issue, and upon the issue joyned, you may have the whole proceedings ingrossed in parchment, and by *Mittimus* sent into the Upper-bench or common Pleas, or else the Lord Keeper, or Lords Commissioners for the Great Seal, for the time being, may deliver it so ingrossed into either Court without *Mittimus*, which is said to be delivered, *Propria sua manu* where the issue shall be tried, and Judgment given for in the Chancery no issue can be tryed: but if the Defendant appear not, you shall have execution by default, which course is indeed most usuall.

How to prove a Will, in Case the party be present, the Inventory not exceeding forty pounds.

First, you are to bring in your Will, under the hand of the Testator and Witnesses names, and take oath, that that is the last will for ought you know, and in case the party live in the Country, there must a Commission issue forth to that purpose, which being returned, you must retain a proctor, and he will sue it out for you, the charge follows, but is alterable according to the length or shortness of the Will.

	l.	*s.*
Inprimis, for registring of the will,	1.	6
For ingrossing the Will,	6.	8
For the Register, for his hand to the same	12.	

Fo

For the Seal and probate of the will 6. 8
The Proctors fee and the prox. } 4. 8.
For proving the will }
For ingrossing the Inventory } according as you
and exhibiting the same. } can agree.

These fees would be far lesse, could the Registers Clarks be confined to walk by what the Statute directs, and in some very short wills they are lesse then what is above set down.

The Dutchie Court.

THis Court before the Sale formerly made, and the large grants of the Dutchie lands, was much used in relation to suits between the Tenants of those Lands, and also against accountants and others for the Rents and profits of the Lands, and is a court of Record, wherein are Pleas both reall, and personal, as also mixt pleadings, relating to the dutchie lands.

The Chancellor of the Dutchie is the chief Judge of this Court, and next to him the Attorney of the said Court, who in all difficult cases in point of Law is usually assisted by two Judges of the common Law out of one Court or other, to decide the matter or question in Law.

There is one chief Clark or Register of the court, to whose office it properly belongs to have the Keeping of all the Rolls and Records of the Court, and also of the proceedings therein.

There are divers Auditors of this Court, of which there are two more especiall then the rest. The one whereof, his Office extends to all the Dutchie Lands on this side *Trent*; and the other for the Lands beyond *Trent*. To those Auditors doth belong the keeping

ping of the Kings Evidences, as Leaſes and Gran of the Dutchy Land, as well of the Poſſeſſions a Copy-hold as Fee ſimple and Fee-farm.

Although there be divers Surveyors for the Dutc Land, for the ſurveying of it, yet do they not ke any Record to that purpoſe, unleſſe ſome ſh draughts of their own framing.

Thus much for Courts of Record at *Weſtmin* which are for the common Law practiſe; come now to the Court of Equity, which in many caſes bates of the rigour and ſeverity of the common L and is called,

The high Court of Chancery.

IN this Court the Lord Chancellor or Lord K per of the Great Seal, were formerly, and now t Commiſſioners of the Great Seal are the chief Ju ges, And in this Court, they, and in their abſenc the Maſter of the Rolls, do make Orders and D crees.

The ſubordinate Officers of this Court are m ny.

The twelve Maſters in Ordinary, which are a ſtants to the Commiſſioners, and ſit with them, a to whom references are made, and before whom *A davits* are made, and deeds acknowledged, and r cognizances, *&c.*

The Regiſter of the Court who hath divers un der him, that ſit in Court and take notice of all O ders, Decrees made in Court, and accordingly, afte wards draw up theſe Orders, and enter them an file them.

The ſix Clarks, in whoſe Office all proceedings u on Bill, and anſwer unto the very Decree, and afte Decree are acted, and from whom likewiſe iſſue ſom

Paten

Patents; as for pardon of men for chance-medley tents for Embaſſadors, Commiſſions for Bankpts; and theſe by their Clarks, of which each ſix lark keeps a ſet number.

The Curſitors of the Court, who were incorporad by Queen *Elizabeth*, by the name of the foure d twenty Curſitors, amongſt whom the buſineſſe at lies in the ſeverall Shires, is ſeverally diſtribud. Theſe make all original Writs in the Chancery, hich are retnrnable in the Common Pleas, and all rits of Entry and Covenant.

The Regiſter is a place of great note in this Court, d hath ſeverall Regiſters under him, who ſit in ourt by their turnes, and take notice of all orers and decrees made in Court, and accordingly raw up the orders, to which you muſt have a Regiers hand, and then you muſt enter it there, and in at Office likewiſe they file the Reports of the Maers. The Maſters of the *Subpena* Office. The Clark the *Affidavits*, where you file ſuch *Affidavits* as you ſe in Court.

The Clarks of the Petty bagg, who have many larks under them, and theſe clarks have much varie- of buſineſs that comes through their hands, and equires very much knowledge and experience for he managing of.

This Office hath the making out of all writs of Summons to the Parliament.

To this Office are all Offices that are found *poſt mortem* brought to be filed.

In this Office are all pleadings of the Chancery, concerning the validity of any Patent or other thing whatſoever, which paſſeth the Great Seale.

And theſe Pleadings were formerly in Latine, although moſt of the reſt of their Proceedings were in Engliſh.

If any queſtion ariſe about the acknowledgment of any privat Deed between Subjects, which is acknowledged in Chancery, before the Lord Keeper the Maſter of the Rols, or any of the Maſters in Chancery.

All Statutes and Recognizances taken before any Officers of this Court, to that purpoſe deputed, are here proſecuted and tranſmitted hither.

In theſe Offices are all Suits for or againſt any perſon priviledged in the Court.

It is likewiſe a hand whereby to tranſmit divers things, from the riding clark; and the inrollment Office, to the chappell of the Rols.

The Examiners are Officers of this Court, who take the depoſition of Witneſſes, and are to examine them, and to make out copies of the Depoſitions.

There are likwiſe Clarks of the Rols, who ſit conſtantly in the Rols to make ſearches for Deeds, Offices, *&c.* and to make out copies.

The Uſher of the Court, who hath the receiving and cuſtody of all Monies, ordered to be depoſited in Court, and payeth it back again by order.

The Serjeant at Arms who carrieth the Mace before the Commiſſioners, and to whom any Perſon ſtanding in contempt are brought up by his Subſtitutes as priſoners.

The Warden of the Fleet attends likewiſe this Court, to receive ſuch Priſoners as ſtand committed by the Court.

This court conſiſts of a double power, ordinary, as in the caſe of *Scire facias*, to repeale Patents in caſe of Traverſe, Endowment of a woman, and the like; and herein the court is limited, and confined to the rules uſed in the common Law.

The other is extraordinary, and unlimited, which is in caſes of equity, wherein reliefe is to be had by

Suit

uit here, by way of Bill and anſwer.

By the power of this court, are iſſued forth com-iſſions for charitable uſes, Bankrupts, and Sewers

Here in this court in ſome caſes, Com miſſions have een granted to examine waſts, to ſet out meet ways r paſſages; to prove a Child legitimate, to prove uſtomes, and to examine Witneſſes, *in perpetuam i memoriam.*

It proceeds by way of Bill and Anſwer, in many ſes this Court will give reliefe againſt, beſides, and eyond the rules of the common Law, ſome whereof llow. As where a charge lies upon one man alone, y the common law, where in equity others ought contribute a part to this charge, here in this caſe e court will give reliefe.

So likewiſe will the Court relieve one againſt a-other who had falſified and broken his truſt with im.

It gives reliefe againſt the extremity of an en-gement, where either the engagement is without y conſideration, unreaſonable, diſhoneſt, or diſ-harged; or where there hath beene either fraud, rce, or the like, uſed to procure the thing to be one.

Where by a Law a man cannot be compelled to rform an agreement, this inforces it.

It inforces the enrollment of a Deed, if need be.

This Court will reſtraine other Courts that take pon them a greater juriſdiction then properly they ave, and removes the Suit into this Court, which s done by *Certiorare.*

This Court will reduce the generall cuſtomes of Mannor to a certainty between the Lord and Te-nnts, or the Tenants themſelves.

It ſerves to recover Land or Money given to cha-itable pious uſes, and miſimployed,

It

It inforces the Husband to give his Wife Ali
mony.

Where Creditors are unreasonable, this Court in
forceth them to take a reasonable composition of th
Debtor, he being disabled.

Where Freehold or Copyhold Land are confoun
ded, it will distinguish it, or if it be lost it will give
recompence for it.

This Court will ascertaine the Fines of Copy
holders.

This Court (where Executors or others have mo
ney in their hands there to lye long) inforces the
to give security or interest for it.

This Court will inforce the recovery of a Legacy
or force the performance of a Will.

It serves for the recovery of ones Land, debt, o
duty, although he have lost the Conveyances o
Writings, by which he should make his title to it, o
otherwise be without remedy for it.

It inforces him that hath sold Land, and take
money for it, assured by defective conveyance,
make the same perfect and good.

It will inforce a Tenant to attorne, to perfect a
Assurance.

In these and such like cases this Court of Chance
doth alwayes, or for the most part, give relieve
you may see more at large in *Tothills* and *Caries* R
ports.

In some other special cases likewise this Court do
exercise a power, as to prevent the disinheritance
an Heire, or restore it.

To avoid the extinguishment or suspension of re
or common.

To prevent an occupancy.

To avoid the barr of an Action, by the Statute
21 *Jacobi* of Limitations.

It will order the incloſure of Grounds of Lands that are common, give relief againſt the turning of a Water courſe from a Mill, ſo as there be any ſpeciall circumſtance in the caſe, otherwiſe it is very nice and tender in making orders in them.

But regularly this Court doth not give relieſe where the ſubſtance of the Suit by Bill and Anſwer tends to the overthrow of an Act of Parliament, made for the publique peace and repoſe, or to the overthrowing any fundamentall point of the common Law, or to overthrow and take from their Courts their peculiar Juriſdiction, or the like.

In all ſuch caſes wherein the Plaintif hath his remedy at common Law for the very ſame things, he ſhall not be releived here.

Where a promiſe is made to aſſure Land for a certain ſumme of money, in this caſe the party may either ſue at Law for damages, or in Chancery for the Land it ſelf.

The like caſe for a Nuſance, where the Law gives the damages, I may ſue here to have the Nuſance removed, or the thing it ſelfe reſtored: And yet there may be ſome ſpeciall circumſtances in the caſe, which may make the Court retaineit, as where a Suit is grounded upon a Will *Nuncupative*, Leaſe paroll, or long Leaſe, to avoid Wardſhip, or to eſtabliſh perpetuities, or to defeat Purchaſors, or for Brokedge, or rewards to make marriages, or for bargaines at play, or wagers, for bargaines for Offices againſt the Statute of 2 *Edward the ſixth*, or upon contracts for Vſury, or Symonie, or if it be for Land not worth forty ſhillings a yeare, or for any thing elſe under the value of ten pound, thoſe are regularly diſallowed here: And ſometimes upon notice taken hereof by the Court, upon motion or upon *Affidavit* onely, before the Cauſe comes to hearing it is diſmiſſed, but if

if it ſtay longer till it comes to hearing, it is the diſmiſſed; yet there are ſome circumſtances that ma make ſome of theſe retainable, as where the Suit for ſ ſmall a matter be for the poor of a Pariſh, or th like.

In ſuch like caſes as theſe the matter being hear upon Bill and Anſwer, and the proofs of witneſſe the Court may (without any regard to forme or mi pleading, ſo as the truth, *viis & modis* may be di covered) proceed to ſentence it according to Equit and good conſcience.

All perſons able in Law to ſue or be ſued, may i this Court ſue or be ſued.

Relief may be and is often given againſt or for a Infant in the Court, touching which matter the things are to be known.

As to Suits againſt an Infant.

Firſt, An Infant hath been compelled to anſwe a bill in this Court, as in *Hares* caſe. *Hil.3. Ja.* an *Mores* caſe, 11 *Caroli*, *Tothil* 108.109. And being bu twelve yeers old was bound by a decree of th Court 37. *Eliz. Wadhams* caſe, and upon a review de creed again, *Cromwells* caſe, *Mich.* 7. *Caroli*, and w committed to the Fleet for diſobeying a Decree, *Eliz. Tothil.* 108.139.

Secondly, This Court may alſo if it pleaſeth a point an Infant Defendant, a Guardian to defen his ſuit, *Caries* Reports 38.

Thirdly, A copy-hold was ſurrendred to the uſe o an Infant; for the Infant to pay an annuity to an th er at his full age which he refuſed; it was decree he ſhould pay it, and the arrears thereof, *Sawyer* caſe, 9. *Eliz. Tothil* 107.

Fourthly, *Young* purchaſed Lands in the nam

f *Maſon*, in truſt for himſelf and his Heirs, and dies ot declaring any determination of his truſt, pro-ures *Maſon* to convey it to him being of kin, he onveys it to Infants, C. ſues here as next Heir, the Court agrees, that if the benefit of the truſt did be-ong to C. that it ſhall be decreed to him, during the inority, and then that the Infants ſhall convey it; e *Caries Reports*, 30.

Fiſtly, A Mother conveyed her Leaſe to her Son truſt, and after the Son conveyed it to his chil-ren Infants, and it was decreed againſt the Father nd Children, becauſe done without any conſidera-on, *Tothil.* 98.

Sixtly, between the date and ſealing of the con-eyance of Land ſold, the Lord *Morley* paſſed it to n Infant, and it was decreed againſt the Infant and im both, 36 *Eliz.* Lady *Rußels* caſe.

Seventhly. The Father being Tenant in tail, ſells is intailed Land, and leaves as much Free-land to ſcend to an Infant, the Court ordered when he mes of age to pay the money given for the Land cording to his Fathers Will, or elſe that the Pur-aſer ſhall have the Free-Land, *Tothil* 184.

Eightly, An Infant may by this Court be compelled give a diſcharge of money due to , and received him, as in *Rayners* caſe, 13 *Caroli.*

Ninthly, Where one made an Infant Executor to event the payment of his Debts, and he was orde-d by the Court to pay them notwithſtanding, *ich. 9. Jacobi. Tothil.* 108.

Tenthly, An Infant may in ſome ſpeciall caſes by is Court be concluded by his agreement.

But regularly if an Infant be twenty years of age, d make a contract never ſo much to his advan-ge, the court will not conclude him, nor will the ourt decree againſt him by his conſent or the con-

ſent

ſent of his Parents, but in ſome ſpeciall caſes up the Merit of the cauſe, *Mich.*8. *Caroli in Chancery.*

A Father being about to convey ſome of his La to his younger Son, and the Eldeſt Son promiſed give the younger Son a hundred pouuds if the F ther would forbeare it; in this caſe the Eldeſt S being an Infant was ordered to ſtand to it, See Sti his caſe, 2 *Caroli Toth* 95.

Eleventhly, A Surrender was made of a cop hold by an Infant, to the uſe of *J.S.* for money pai and no help could be had here, *Hughs* caſe, *Toth* 180.

Twelfthly, If I take Bonds for my money in childrens name that are Infants, I may releaſe t Debts, and this Court will allow it, and forbid a ſuit upon them.

As to ſuits by, or for an Infant.

Firſt, He ſhall have the ſame relieſe upon breach of truſt, fraud, or the like in this Court as nother Man may have, notwithſtanding his Min rity, *Tothil* 108.

Secondly he may ſue by himſele or his proche amy or Guardian, as the court will order.

Relief is often given by this court, againſt, or a woman under covert Baron, touching which, the things following are to be known.

As to ſuits againſt her.

1 She ſhall be compelled to anſwer with, without her Husband, See *Caries Reports*, 100. 10 *Tothil.*95. and 96. But more eſpecially, if he be

of the Land: And ſhe ſhall be bound by the decree of this court, as in *weſtdeans* caſe *Tothil* 93. and ſhe may be committed till ſhe do obey it, as in *Stwywards* caſe.

2 The Husband and Wife were ordered to levy a Fine, and perfect aſſurances, *Tothil* 93.

3 The Husband was ordered to give ſecurity, that the wife ſhould releaſe her right to land. See *Tothil* 92.

4 An agreemenr in ſome caſes will here be ordered, to conclude her where the merit of the cauſe requireth it: As if a man have two Tenements of his wives Land, and they agree with the Tenant, that if he will ſurrender the one, he ſhall have three lives in the other, and he doth ſo, and the Husband die; the wife was ordered to make it good, See *Irelands* caſe 37 *Eliz. Tothil* 91. but regularly it is otherwiſe, And therefore where ſhe hath land with other coheirs; and ſhe with the conſent of her Husband, agree to take a thouſand pounds, to releaſe her right, the Judges did certifie ſhe was not to be concluded, *Trin. 7. Jacobi Dockwraies caſe, Tothil* 98. yet in 10. *Jacobi Randalls* caſe was, that a ſingle woman did agree, and after the Marriage ſubſcribed her name with her Husband to a later agreement, and was concluded by this later, by the Courts order, *Tothil*, 96.

But in *Slaters* caſe, 47 *Eliz. Tothil* 92. She and her Husband did article to forgoe her Joynture, for other recompence, and a Decree was made thereupon (but without her conſent) in her Husbands lifetime, and after his death the court will not binde her to this agreement.

5 A Leaſe of Land was made to friends, to her uſe, to begin after her Husbands death, and they two levy a Fine of the Lands, this will not bar them

in

in Equity, *Trin.* 15. *Caroli. Liſters caſe.*

A. made over his Leaſe for yeares, to the uſe of his Wife, after he and his Wife ſold the Land, and levied a *Fine* of it to *D.* The court ordered that the Purchaſer ſhould injoy the Land againſt the Wife, after her Husbands death, 2 *Caroli.*

One was ſeiſed of Land to the uſe of a feme ſole who after took a Husband, and the Husband ſold the Land, the Wife had the Money and ſhe and her Husband deſired the Feoffee in truſt to convey it and he doth ſo, yet it ſeems the Court of Chancery will not bar her of the Land, after her Husbands death.

The Court ordered the Husband and Wife to levy a Fine of morgaged Lands, ſetled in her; the Lady *Griffins caſe*, 4 *Caroli.*

One did convey Land to the Husband in truſt, and he took the profit and left it with his Wife, and ſhe married again; they two were ſued in this Court and yet neither as Executor nor Adminiſtrator to her firſt Husband, as in *Acklands caſe*, *Tothill* 106.

As to ſuits by and for her

In ſome caſes ſhe may ſue her Husband, as for Alimony or maintenance, where they be parted, but ordinarily ſhe may not ſue her Husband, nor her Husband ſue her, *Sympſons caſe*, *Tothill* 94. 97.

Secondly, ſhe hath been allowed to ſue without her Husband and without his privity, eſpecially being beyond the Sea, *Tothill*, 95.

The woman and her Husband agreeing to part upon difference, and he giving her a ſum of Money for her livelyhood, which was put into a friends hand for her, ſhe was allowed to ſue alone for this without her Husband. *Caries* Reports, 87.

Thirdly, She was admitted to ſue here for a due releaſed by her Husband, gone beyond Sea, as

Farr

Fawells case 32. *Eliz and Barkers case*, 5 *Caroli Tothi* 5. as for her Jewells, the Earl of *Derbies case Tothi* 6. And yet ſhee having Goods ſhe pretended to be her *Paraphronalia*, the Husband deviſed them, and it was here allowed to be good, and ſhe remedileſſe, as in *Davenports caſe* 5 *Caroli*.

Fourthly, if a woman had goods at the Marriage, and the Husband doth uſe and diſpoſe them al his life time, and then giveth them away, or maketh an Executor; this Court it ſems will give her no Releiſe, albeit the Husband leave never ſo great an Eſtate beſides, unleſſe they be goods ſet apart and preſerved for her lively-hood, by ſome agreement or the like, *Tothil* 55.

5. A woman divorced from her Husband *Cauſa Fridigitatis*, ſued in this court for her portion, her Father being alive, and recovered it, *Burrows caſe. Tothil* 81.

6. The Wife being parted from her Husband, and having an Eſtate to her ſelf, was allowed by the Court to deviſe it by her will, *Mich.* 15 *Caroli Tothil* 97. *Georges caſe*.

7. If a feme ſole being poſſeſſed of a Tearm, granteth it over; or a Tearm be granted by another to her own uſe, and then ſhe taketh a *Husband* and dyeth, in this caſe the Court ruled it to go to the Executor or Adminiſtrator of the wife, and not to the ſurviving Husband.

A. Being poſſeſſed of a Tearm, granted it upon a Marriage to be had between him and *R.S.* to *I.S.* her Brother to her uſe, and after marriage *A.* dyeth, and he marrieth again, and then ſhe dyed, *I.S.* the Brother took out Adminiſtration of her Goods, and got the Leaſe, and the ſecond Husband ſued him in this Court for the Leaſe, but the Court would not releive him. *Paſch* 32. *Eliz. Withernams caſe* in Chancery, *Cook upon Littleton* 350.

8. *A.* being poſſeſſed of a Leaſe for yeares, granted it to *B.* and *C.* to the uſe *A.* and his Wife, and afterwards *A.* granted away all his Intereſt to a ſtranger, and the Court would not order it againſt the Wife, *Dyer* 369. *Cromptons Juriſdictions* 65.

A. conveyed her Leaſe for yeares to Leſſees in truſt, to the uſe of her Daughters and Children: lyneally A. had a Daughter by one Huſband, who had Iſſue, and it died, and the Husband alſo, then ſhee marries again, then the Leſſees in truſt convey the Leaſe to the Mother and her ſecond Huſband, and diſcharges the truſt, ſhe gives it to her Husband, and the heir ſued for it.

It was ordered that the Husband and not the Heir ſhould have it.: *Baskervils caſe, Tothill* 95.

A widow being about to marry, to prevent her Husbands diſpoſall of the Land, conveys it to friends in truſt, who with the Husband do ſell it for valuable conſideration, and ſhee ſued in Chancery, and the Court decreed that the Purchaſor ſhould reconvey it to her, but ſhould firſt deduct all his diſburſements: *Fitziames his caſe, Tothill* 43.

A ſingle woman, widow or Maid, may ſue and be ſued here as another Body, of which take ſome few caſes.

1. A widow of a Tenant in *Capite* ſued here for her Dower, and had a Commiſſion to ſet it out; as in *Wilds caſe* 25. *Eliz.*

No woman ſhall recover Dower of a truſt by this Court, *Mich.* 2. *Caroli. Kemps caſe.*

When the woman cannot tell who is Tenant to the Land, ſhee may ſue, (albeit her writ of Dower here at Law) to diſcover the Tenant, to know againſt whom to bring her action: *Tothill* 99.

A. conveys Land to B. and his Heirs, to the uſe of him and his Heirs, in truſt for *C.* and his Heirs

(*B.* having

(*B.* having then a wife) *B.* dies, and his wife ſued for Dower of the Land, C. ſued againſt her for releif here, and it was denyed; yet the wife of C. ſhould not have had Dower in this caſe, for a woman ſhall have no Dower of a Truſt *Hernes caſe Tothil.* 9.

So *A.* delivers *B.* 500 l. to put to uſe for him, and *B.* doth buy Land with it, and makes A. beleive it is for him and in his name, but it was in his own name: A. it ſeems ſatisfied herewith, B. dyeth, and his wife ſued to be indowed of the Land, and the Court would give A. no releife againſt this Suit: *Trinity* 6. *Caroli.*

A Copy-holder may not be ſued for Land without the Lord; *Caries Reports* 57.

An Heir alſo here in ſome caſes ſhall ſue and be ſued, further then the Law bindeth him, as in the caſes enſuing.

An Heire of an Eſtate in taile, having Lands in fee, diſcended from the Anceſtor, in leiu thereof is bound by decree to repay the purchaſe money, or let the Purchaſer have the free land, *Pearces caſe* 8. *Jacobi Tothil* 184.

The Mother and Son bought tailed Land of her Anceſtor, to the Plaintiff ſome of the money due on a Bond which is loſt, the Court thought fit to charge the Mother and the Son, becauſe of the Land in their poſſeſſion.

The father ſold his intailed Lands, but had little for them; it ſeems the Heir may compell the purchaſer to give the worth, *Tothill* 182.

The Father articled for Land, the Son no party, but conſented to it, and it was decreed againſt him, *Pauls caſe Trin.* 4. *Jacobi. Tothil* 69.

A Deed not inrolled was decreed againſt the Heir of the Land, *Tothill* 55.

The Father conceiving his Land to be Free-hold

gave part of it to a younger Son, and it fell out that there was an old ſleeping Deed of intail, and yet it was ordered the younger ſon ſhould have it: *Pounneys caſe, Tothill* 54.

Executors may charge or be charged in equity, further then the Law doth charge, wherein as to ſuits or Acts by them, take theſe inſuing.

1. Here they may ſue one the other, *Tothill* 8.

2. One of them may ſue an Executor of an Executor, if he have gotten the Eſtate into his hands; *Briertons caſe 6 Jacobi Tothill* 87.

3. Two Executors be, the one doth diſagree, the Act of the other ſhall bind in Equity as it doth in Law.

As to Suits againſt Executors take theſe things.

Firſt, one Executor alone without the reſt may be ſued here, but he ſhall be charged for no more then he hath, *Harbages caſe* 35. *Eliz. Tothill* 86:

Secondly, An Executor ſhall be bound by decree againſt the Teſtator *Hil.* 5. *Caroli.*

Thirdly, He muſt pay coſts adjudged here againſt the Teſtator, if he have aſſets.

Fourthly he ſhall not be charged here for a Treſpaſſe done by the Teſtator, *Hollands caſe Tothill* 84.

Fiftly, Nor may he be compelled here to give Bond to perform the will without ſpeciall cauſe be ſhewed, as that he is decayed in Eſtate, or hath broken the truſt already in ſome particulars, or the like *Brownes caſe* 32 *Eliz. Tothil* 36.

Sixthly He may here be ordered to pay a debt by word, before a debt due by ſpecialty, *Tothil* 53.

One Joynt Tenant, or Tenant in common may here have releif againſt another.

The Father may have releif againſt his own Son in caſe of breaches of truſt for a Leaſe. *Paſch.* 15 9 *Dormers caſe.*

Of Truſts

A Uſe of truſt was, and ſtill is either of Land or of Goods, and both theſe are either expreſſed or implied.

A uſe of truſt of Land was a truſt repoſed in another, that he ſhould ſuffer him that did truſt, to take the profits of it, and he that was truſted, was to diſpoſe the Land according to the direction of him that truſted him; as when a Feoffment, was made to *J. S.* and his Heirs, to the uſe of *W. S.* and his Heirs: here *J. S.* had the Eſtate and property of the Land, but *W. S.* had or was to have the profits in honeſty and equity. So if one had agreed with *W. S.* for a peice of Land for 20 l. paid, and had no aſſurance, yet the equity of the Land was in the Contractor.

The uſe of Goods is when one man hath them in truſt for another.

The uſe of Goods or Land expreſſed, is when the uſe or truſt is expreſſed between the parties upon the making of the Eſtate implied, when it is not declared upon the agreement, but left to the conſtruction of Law, as if I bargain and ſell my Land, levy a Fine, make a Feoffment, or ſuffer a Recovery of my Land without money, and no uſe expreſſed, this in Law is to my own uſe.

But if it be for money, it ſhall be to the uſe of the bargainee, conuſee, Recoverer, or Feoffee.

If it be without conſideration that I conveyed my Land by Feoffment to *J. S.* to have and to hold to him and his Heirs to the uſe of his Heirs, in this caſe *J. S.* and his Heirs have the uſe in Law.

To every of thoſe uſes, there are two inſeparable incidents, Confidence in the perſon, and privity in

the ſtate expreſſed by the parties, or implied by the Law: And when either of thoſe failed, the Uſe was either gone for ever, or ſuſpended for a time at the leaſt; and therefore if the Feoffee to Uſe upon good conſideration, had infeoffed another of the land that had notice of the Uſe, the Uſe had been gone for ever; becauſe howſoever there was a privity of Eſtate yet there was no Confidence in the perſon but if the feoffinent had been without conſideration to ſuch a one, in this caſe the uſe had remained ſtill becauſe the Law did inply a notice: So alſo it ſeems the Law was, when it was made in conſideration of Marriage only

And if a Diſſeiſor, Abator, or Intrûdor, had come to the poſſeſſion of the Land, whereof the uſe was, albeit he had notice of the uſe, yet the uſe was ſuſpended during their poſſeſſion, and they ſhould not have been ſeiſed to the uſe as the Feoffee was, for they come not to the land in the *Per*, but in the *poſt*.

If a Lord by Eſcheat, Lord of a Villaine, or one that had entered for *Mortmaine*, or that had recovered in a *Cuſtodivit, &c.* had come to ſuch Land, and had notice of the uſe, the uſe had been gone for ever, for thoſe come to the Land in the *Poſt*, and above the uſe.

And the Tenant in Dower, and by Curteſie ſhould not be ſeiſed to uſes in being, for all theſe wanted privity of Eſtate.

And if there had been tenant for life, the Remainder in fee to the uſe of another, and the Tenant for life had made feofment in fee to one that had notice of the uſes, this ſecond feofee ſhould not have ſtood ſeiſed to the firſt uſes.

So if the Husband had made a Feoſment in Fee of the land of his wife, upon conſideration, and without any uſe expreſſed, the wife ſhould not have had a *Subpœna*, becauſe the Feofee was not in privity of Eſtate of the Wife.

And

And if *Ceſtui que* uſe for life, or intaile, the Remainder in taile with divers Remainders over in uſe had made a Feoffment to one that had notice, hee ſhould not have been ſeiſed to the Firſt uſes.

But now at this day, by the Statute of 27 *Henry the eighth, Chapter the tenth*, the uſe of truſt and the poſſeſſion of Lands are for the moſt part united, & in all ſuch caſes where they are united, and the uſe executed by the Statute, the Chancery doth not intermedle, but leave them to the Law. And ſuch is this, where one ſeiſed of Land in fee, doth convey it to the uſe of one and his heirs, or heirs of his Body, or for life, or to the uſe of one of his Executors or Adminiſtrators for yeares.

But there are ſome uſes and truſts ſtill that are not Executed by the Statute, and thoſe remaine as they were before, and are in the Conuſance and order of the Chancery, as where Lands are conveyed without conſideration in fee-ſimple after this manner, that the Feoffee and his Heirs ſhall teke the profits, and deliver them to the Feoffor and his Heirs, or that the Feoffee ſhall account and give the profits to the Feoffor, or that the Feoffee ſhall convey the land to the Feoffor, or to his Heirs, at his age of one and twenty years, or where it is conveyed to *J. S.* and his heirs, in confidence that *J. S.* ſhall alien it to whom the Feoffor, or to whom *W. S.* ſhall appoint, or the like: Or where the Lands be conveyed to certaine uſes expreſſed, and there no other ſecret uſes be agreed upon between the parties.

So where Land is conveyed to one without conſideration to one and his heirs, without expreſſing any uſe or intent, this is to the uſe of the feoffor, who may diſpoſe of it as he pleaſeth; But if it be to any intent certaine, as to take back an Eſtate with remainders to others, &c. Here hee cannot change it.

Theſe and ſuch like uſes and truſts are not within, nor executed by the Statute, but they remaine as they were before the Statute, for all the ſtate is in the party truſted, and the Grantor, or he to whoſe uſe the Grant is, hath nothing but a uſe for which he hath his remedy only in Chancery, where matters of this nature are determinable, for it is a rule, that as the queſtions of uſes and truſts that are within the Statute are to be decided and ruled by the Judges of the Common Law, ſo all other queſtions of uſes and truſts that are out of the Statute are to be ruled and decided by the Judges of the Chancery, *Cook* 1. 138. *Dyer* 369. 356. *Cromptons Juriſdiction* 65. 58. 59. And the Judges in Chancery in ruling thoſe caſes, do proceed much after the rules they went by in the regulating of uſes at the Common Law, before the Statute.

Before the making of the Statute, theſe amongſt other were the Lawes of the uſes.

1. The Feoffor was to take the profits of the Land, and he might have diſpoſed of it in his life time, or at his death to whomſoever he pleaſed; & his Friends in truſt were to ſettle it accordingly, or be inforced to it by *Subpœna* in this Court; and if hee did not diſpoſe it, the uſe was to go to his Heirs, and if he had dyed without Heirs or diſpoſition, it ſeems the Feoffees ſhould have had the Land.

Secondly, If the firſt Feoffee had conveyed it to a ſecond Feoffee to the ſame uſe, or to a ſecond Feoffee that had notice of the uſes, in theſe caſes the ſecond Feoffee had it to the ſame uſes; but if the Feoffee had ſold it *Bona fide*, or conveyed the Land to one that had no notice of the uſes, in theſe caſes the uſe had been gone, and hee, to whoſe uſe it was, remedileſſe for the Land.

3. A bruit of a truſt, or ones ſaying there was a truſt

trust to another, I being about to buy the Land; because he would not have me to buy it, it seemes is not sufficient, but a Suit about it, and proofe of it in Chancery, is sufficient notice to him that shall buy it.

4. If the *Cestuy que use* had appointed the Land to be sold by his Feoffees to pay his Debts, the Creditors might have compelled the Feoffee to sell it, if he in his life time, or by Will at his death had appointed them to convey it to *J. S. J. S.* might have compelled them to it, and so their Heirs.

5. The Feoffees (if any occasion had been) were to bring or defend any Action for the Land, & to plead such Pleas as the Feoffors should appoint, or be inforced in Chancery to it.

6. If the Feoffor dye, and the Land descend to his Heire, the party to whose use, *&c.* as it seemes had noremedy against him.

7. If the Feoffee or Donee to use, sell to one that knows of the use, the *Subpæna* shall go against them both, or otherwise against the party trusted only, who must make a recompence for the breach of trust, if the Land be gone.

These amongst other were the rules by which uses at Common Law were guided, and much accordingly are uses not executed by the Statute, and trusts of Lands and Goods ordered and guided at this day, as in the cases following, Of Inheritance and Freeholds, of Chattel., of Goods.

OF Inheritance and Freeholds.

IF I without any consideration Enfeoffe one and his Heire, of Land, to the intent he shall take the profits thereof, and deliver to me and my heires: Or

to

to the intent he shall account to me and my Hei
for the profits thereof; or to the intent he shall r
convey it to me and my heirs, or to my heire at or
and twenty years old. or to the intent that he sha
alienate it to *L.M.* and his Heirs, or to whom I sha
appoint; or *I* convey it to certaine uses expresse
but there are other secret uses agreeed upon betwee
us, in all such like cases which are out of the St
tute of uses, this Court of Chancery, if any co
plaint be, will order the parties trusted to perform
the trust.

If I without any consideration bargain and sel
Land by Indenture, to one and his Heirs, to t
use of another and his Heirs (which is a use upo
a use) it seems this Court will order this: B
if it were in consideration of Money by him pai
here it seems the expresse use is void both in La
and Equity.

And if a woman in consideration of four hundr
pounds paid her by her Son, bargaine and sell h
Land by Indenture to him & his Heirs, to the use
her self for life, and after of the Heirs of her Son,
which case by Law the Fee-simple is to the Son
presently, and the use for life to the Mother voi
nor is there as it seems any relief for her in th
Court in a way of Equity becaufe of the consid
ration paid, but if there were no consideration, o
the contrary, *Tothil* 188.

A voluntary conveyance was made to friends
trust, to the use of the mans owne Children, with
remainder over; the Feoffor being indebted mu
Mone, the Court inabled him to sell part of it
pay his debts, *Grants case*, *Tothill* 42.

If one that hath Land in trust, convey it to o
that hath notice of it, and he convey it to one th
had no notice of it; in this case he that had no n
tic

ice is ſeiſed to the firſt uſes *Pills Caſe, Tothill* 186.

If one convey his Land to Friends in truſt, and after ſell the Inheritance, the truſt in equity goes to the Purchaſer, *Decrees Tothill* 44.

Copy-hold was ſurrendered to the uſe of *J. S.* to the intent that he ſhould pay an Annuity to a third perſon, the which he refuſed, the Court ordered him to pay it with all the Arreares, *Tothill* 107.

Of Chattells reall, and terme of yeares.

IF I be ſeiſed of Land in *Fee*, and convey it to *D. L.* and his Heires, to the uſe of *W. S.* his Executors and Adminiſtrators for twenty yeares, or for any other number of yeares, in this caſe the uſe will be executed within the Statute: But in caſe where I be poſſeſſed of a tearm of years in being, and grant it to Friends to any uſes and purpoſes in truſt, this is out of the Statute of uſes, and orderable in Chancery, onely where if the truſt be broken, I muſt have remedy.

One poſſeſſed of a tearme in yeares, conveys it to Friends in truſt, to the uſe of *D.* for life, and after of the Heires Males of his body, in this caſe the Court reſolved and ordered that *D.* ſo long as he hath an eſtate may diſpoſe it; and that an intaile of, or out of a Chattell, is not good: But a Remainder in taile of a truſt may be ordered in Equity, the Judges agreeing to it, *Tattons Caſe*, 7 *Jacobi*, *Tothil* 83.

The generall truſt of an Executor is to pay debts and legacies, and for the ſurpluſage to account to the Ordinary, *Ad pios uſus.*

Henry, Earle of *Darby*, conveyed certain leaſed lands in truſt to *Doughty* his ſervant for payment of his

his Debts, and upon a mediation of an end of Contr
verſies between the Daughter of *Ferdinand*, Elde
Son of *Henry Earl*, and *william* his younger Son no
Earle: It was ordered and agreed, that *william* th
now Earle ſhould pay all his Fathers Debts; wher
upon *Doughty* conveyed all thoſe leaſes to *willia*
and after the Creditors ſued him in Chancery, b
had not releif, and were ordered to puſue their rem
dy againſt *Earle william*, *Hil.* 1. *Jacobi*, *Caries Repo*
25.

The Plaintifs Wife conveyed away the Eſtate
the Defendant her Son before marriage, and aft
the Defendant conveyed it to his Children: In th
caſe the Court conceiving it to be done without a
Conſideration, did decree it for the Plaintiff again
the Defendant and his Children, *Poveys caſe*, *T*
thill 98.

Of Chattells perſonall, or Goods.

IF I deliver Money or Goods, to cauſe a Stat
bond or other Eſpecialty to be made to another
my uſe, or to any purpoſes or intents in truſt, and
perform not the truſt, I may compell him to it,
to give me recompence for the breach of the tr
here, and therefore if he diſpoſe the money or goo
to his own or any other uſe, then I appointed it,
will not diſpoſe it according to my minde, or rele
or diſcharge the duty, my remedy is by *Subpœna*
this Court, and if in theſe caſes the Goods or mon
be taken from him, or he have any iniury in the
he muſt ſue for remedy, and I may compell him to
here, 7. *Ed.* 4. 14. 29. *Cromptons Juriſdiction*, 43. 6
65. *Brook Feoffment* 60.

If a Statute be made to *A.* and *B.* to the uſe of
alo

one; and the Conuſor get a releaſe of it from *B.* a-
e, in this caſe A. ſhall have remedy here againſt
em both, (as ſome ſay againſt B. only; and not a
inſt the Conuſor.) See *Caries Reports* 14. *and*
.

Of Bargaines, Agreements, or Promiſes.

ARticles of Agreement were breiefly drawne be-
tween two, and their hands to it, for the Sale
d aſſurance of lands for money; the Seller refuſed,
d upon complaint here, was ordered to make the
ſurance according to the agreement, the Manner
the aſſurance referred to a Maſter of the Chancery:
hivers caſe Hil-4. Caroli.

A Suit was brought here upon a paroll agreement
execute an aſſurance of Land upon a Marriage a-
reement (the caſe thus.)

A. Suitor to B. the Brother of A. comes to B. and
lls her that if ſhee will marry his Brother, he will
ſure her of twenty pounds a year land for her Joyn-
ure, and ſhee did marry him, and after he refuſed:
was decreed in this Court, and the Court of Re-
queſts both, that he ſhall be compelled to it; and
here it is ſaid, that heretofore the Chancery did
ot uſe to decree paroll agreements for aſſurance of
Land, it is now otherwiſe; for where there is any Ex-
cution of it by payment of all or any conſiderable
art of the mony for the Land, there the Court doth
decree it.

In the Exchequer one ſued by Engliſh bill upon a
aroll agreement to have land aſſured, and ſhewed
hat he had provided two thouſand pounds the pur-
chaſe

chaſe money to his great loſſe, *&c.* And the other refuſed to aſſure the Land: in this caſe the Court would not decree the aſſurance of the Land, but decreed he ſhould pay the Plaintiff damages for his loſſe. So in the 13 *Caroli, Olivers caſe.*

The agreement was to convey the Land, as Counſell ſhould adviſe, the Paper Book drawn, and agreed on to be ingroſſed, and then the ſeller refuſed to proceed: in this caſe the Court would not decree it to be done, becauſe no articles nor money paid, but a bare paroll agreement, and yet ſome ſpecial circumſtance may make this binding, and therefore a verbal agreement between Lord and Tenant, becauſe the Tenant was an ancient Tenant, and hath been at charg at building was decreed. *Kings caſe and Hunts caſe, Tothill 65. 66.*

A. covenants with *B.* upon the marriage of his Daughter, to levy a Fine of the Land to *D.* And the Daughter being dead, and ſome money unpaid, *A.* ſold away the Land to others. In this caſe he was ordered for a hundred marks to make the Eſtate good. *Mich. 8. Caroli Pages caſe, Tothill 47. and 48.*

A Bill was preferred here, ſuppoſing ten ſhillings paid; and two thouſand pounds to be paid for Land to have the Land aſſured, and upon Demurrer it was over ruled becauſe it may be to prepare for an Action of the caſe; but it ſeems in this caſe the Court would not decree the Aſſurance, *Trin. 38. Eliz. willams caſe Totbill 72.*

The cuſtomes of a Mannor were in queſtion between Lord and Tenants, and Tenant and Tenant. And a generall agreement made by deed indented and inrolled here, and a Bill to eſtabliſh it and nothing could be found but the Deed, and yet the court would not alter it, albeit was objected that the Lord was at the time of the agreement Tenant in

Tail

ail, and ſome of the Tenants infants and feme Coerts; *Caries Reports* 22.

If one enter into a Statute to *J.* S. who doth afterards by Indenture of agreement promiſe and agree ith the Conuſee, that in caſe the Conuſer did faile f payment, Execution ſhould be done upon ſome ertain Land only: In this caſe, if after it he ſhall ue Execution upon any other Lands, the party rieved may have relief here, and compell him to erform his agreement, and have an injunction alſo he deſire it: *Pulvertoſts caſe*, *Caries Reports* 37.

The Plaintifs Bill was that he leaſed a houſe to e Defendant, and did Covenant to repaire it, and en the Defendant did covenant to keep it ſo, and at the Defendant as well to make the Plaintife reak his Covenaut, as to free himſelf from his Coenant, did interrupt and threaten the workmen, ſo at they durſt not go on, and ſo the houſes are deyed, and the Plaintif without remedy. The Deendant demurred, pretending the Plaintif had remey by Law, but it was overruled and put to anſwer; *aries Reports* 59.

A Bill was brought to be relieved againſt the Deendant as Brother and Heir, for that the Plaintif d paid to his deceaſed Brother, 34 l. for a Leaſe, nd he died before it was made, and therefore deſired is Leaſe or the money, and was relieved, *Caries Reorts* 77.

One Joyn-Tenant promiſed the other, lying on his eath bed, he would not take advantage of the ſurviorſhip, but ſuffer him to diſpoſe of it by his will, by hich he deviſed part of the payment of his debts, nd the Survivor was ordered to make the Eſtate acordingly: *Caries Reports*, 81.

The Plaintif bought of the Defendant the reverſio of a copyhold which he could not injoy, as was con

feſſed

teſſed by the Defandants anſwer Ordered by the Court to ſhew cauſe why he ſhould not repay the money back again, which he had received on the Bargain: *Caries Reports.93.*

One brought his Bill to be releived, hereupon promiſe made to him by the Defendant to ſurrender a Leaſe upon the payment of a hundred Marks; and becauſe the matter was meet for the Common Law. *Caries Reports 95.97.*

The Bailiffs of a town promiſed a Leaſe, the Court upon this would not give any releife againſt any of their Succeſſors but againſt the ſame perſons, as common perſons upon the promiſe: *Caries Reports* 103

What miſpriſions in conveyances, or other Deeds are releivable here.

WHere there is any miſtake in a Deed, ſo that it is not made in purſuance of the intentand Agreement of the party, this Court gives Releife

If the word Heirs being in fee ſimple, or the like be omitted; or that part of the Land bought and ſold be left out of the Deed, and that it do appear that the conveyance was made upon good conſideration, the Court in this caſe will rectifie: ſee to this purpoſe, *Caries Reports*, 16. & 17.

Dean and Chapter of *Briſtow* made a Leaſe, miſtaking the name of the corporation, and the court held that for Leaſes made for ſome time of continuance and upon good conſideration, there ſhould be releif given here, *Caries Reports* 32.

The Leſſee in the Leaſe was not named in the premiſes of the leaſe, but in the *Habendum* only, decreed

to be

e good, and being referred to the two chief Juſtices nd the chief Baron, was by them certified to be good n Law, *Butlers caſe*, 22 *Eliz. Caries Rep.* 88. One rought his Bill here, to be releived, for that he had onveyed by the Deed more Land then was intended nd agreed; in this caſe becauſe it appeared that he Defendant was a Purchaſor, upon a valuable conideration. The Court would not relive the Plainiff, *Cliffords caſe*, 4 *Jacobi*, in Chancery: And yet here more Lands paſſed by a Fine then was intended, and the party releived here by the Judges conſent, *Caries Rep.* 20

Miſtakes in making of a Bond in either of the parties names may be holpen here, *Culſtons caſe*, *Tothill* 7.

If a power be reſerved to make Leaſes by a Covenant without a tranſmutation of the poſſeſſion, no helpe can be here, becauſe it is void in Law: And if it be upon a change of poſſeſſion, and the power be not preciſely followed, that is doubtfull, and rather more ſtrong againſt help, for then the Eſtate works and the power gone, and upon Wills no help. See *Caries Rep.*

If one be bound to me for money, and the ſame day after the ſealing of the Bond I give him a releaſe for other things, which by miſtake is made too generall, whereby this Bond is alſo releaſed, in this caſe I may be releived here, and ſhall receive the money notwithſtanding, *Topps caſe*, *Tothill* 27.

Had dam the Husband was ordered to procure his Wife to levie a Fine, and to enter into a new Bond of five hundred pounds, becauſe the old Bond was worth nothing, by the miſtake of the Writer, 10 *Jac. Tothill* 140.

Where an assurance of Land is made defective, this Court will inforce the perfecting of it.

WHere a Conveyance is made for Lands or Tenements, and it is found defective, and the Estate not well executed to the Purchasor, according to the intent of the parties, for lack of words sufficient in the Deed, or for lack of Livery of Seisin, Attornment, inrollment, or the like: and there was a good consideration given for the Land; in such like case the Court in behalf of the Purchasor will compell the party, in whose power it is, to perfect the Estate, *Tothill* 44. 48, 182, 183. 138.

Where a man for money, or other valuable consideration sells Land to one, and the word *Heires* is left out in the *Habendum*, in this case the party who sells shall be compelled to amend it: And so when lesse is granted then was intended, and so for any other mistakes *Caries* Reports, 16, 17.

A Messuage was demised (*Cum pertinentiis* only) and because sundry Lands had been occupied formerly therewith for the same Rent, and by lease of the same words, the Lord Chancellour *Bromley*, and the judges ordered it shall all passe, though perhaps in Law they will not passe by those words; but it seemes in such like cases it is very considerable in Equity what the value of the Land is, and what money is given; for if the House whith the Apurtenances be sufficient for the money, unlesse the intent of the parties were to grant the whole, it seems agreeable to Equity that there should be no futher Extent made of the words then what the Law makes.

The

The Anceſtor takes money for a Leaſe, and dies before it is made; the Heire muſt make it good or repay the money, *Caries Reports* 7.

Where a man for money, or other valuable conſideration, ſells Land by Deed, but Livery of ſeizin is omitted, I may compell him afterwards to do it, by this Court: So likewiſe, if upon the ſame conſideration he ſell me land in two Counties, and have given me Livery of ſeizin of the Land only in one County, this court will order him to make livery in the land in the other county, or pay back part of the money, *Caries Reports* 17.

Where a conveyance is imperfect through the want of the Tenants Attornment; the Tenant in this caſe ſhall be compelled by this court to attorn, and ſo it was decreed in *Hillary Term* 2 *Caroli*.

A. was leſſee for one and twenty years, and leaſed to *B.* for ten years, rendring Rent; *A.* without the privity of *B* did grant the Reverſion to *C* and *B* refuſed to attorn, and *C.* thereupon ſued *B.* in chancery to compell him to attorn; And in this caſe it was decreed by the Maſter of the Rolls with the aſſent of the Maſters of the chancery, that he ſhould attorne and pay the arrerages; But Juſtice *Whitlock* then aſſiſtant was utterly againſt it, and of his opinion were the two chief juſtices, chief Baron, and Juſtice *Dodridge*; but they all agreed the parties themſelves to the aſſurance may be compelled to make livery; and it hath been often denied here to compell him to attorn who is at liberty by law, eſpecially where the party quarrelleth at the Tenants eſtate, or entreth into part of the land, or hath covenanted for recompence in caſe of not attornment, *Caries Reports* 4.

Where the Conveyance is made without good Consideration, This Court of Chancery *will give no relief.*

FOr instance; Where there is a Rent granted and no Deed to warrant it, and nothing given for it, or a Reversion is granted, and nothing is given for it, this Court will not inforce the Grantee to perfect it.

Where Estate was made by Covenant, and not good by Law, it was ordered by this Court to be made good, *Princes case*, 40. *Eliz. Tothill* 85.

A Deed which was not inrolled was by this Court decreed against the Heire of the Land, but agreed it should not bind any other Estate challenged by survivorship or otherwise; *Pauls case*, 14, *Caroli Tothil* 54.

A Bill was here exhibited to be releived against the Defendant, who would have avoyed an Estate for lack of Livery of seisin, and it appeared that the Plaintiffe had injoyed it quietly five and twenty years, in this case it was decreed he should continue the quiet possession without Livery and Seisin, *Ridges case*, 17 *Jacobi Tothil* 54.

Upon Promises concerning Goods or Debts.

WHere there is a Contract made for Goods or Chattells wherein the Contractor hath an

wron

wrong done him, if he gives (*Quid pro quo*) that ſo it appeares there is a good conſideration in it: In this caſe the Contractor may be here releived, but on the contrary where there is no conſideration, for there is *Nudum pactum*.

Where a man makes a promiſe without conſideration, to build a man a houſe, make him ſuchor ſuch Goods, he ſhall not be here compelled to it *Crompons Juriſdiction* 49.

A ſpontaneous and generall promiſe without any conſideration was made by the Son to pay his Fathers Debts (no advancement coming to him by his Father) he being ſued here, the cauſe was diſmiſt: *Alexanders caſe 7 Caroli*.

Where the Obligee agrees with the Obligor, to give him day for payment of the Debt, and hee ſueth him or his Surety before the day given, here this Court will releive him.

What reliefe ſhall be had where there is extremity uſed, upon a Statute Mortgage, Bond, or other Ingagement.

WHere a man by way of Mortgage conveyes Land to another for ſecurity for money lent in this caſe albeit the time of Redemption be paſt yet upon the paying of the principall money, Intereſt and damages, he may have the land againe by Decree of this Court; yet where the Mortgage hath been of long continuance, as of twenty yeares or upwards, this Court will hardly give back the Land, unleſſe in ſome caſes extraordinary: And if the Mortgager make a Feoffment of it to a ſtranger, and ſo

extinguish the Condition, unless it appear to be the end to pay the Debt, the Feoffee perhaps may not have this advantage: *Caries Reports*, 53. *Crowthers* Case, 39. *Eliz. Tothill* 79.

A Copy-holder in fee surrendred to the use of one and his Heirs, upon condition of redemption; after this computing his Debts, and writing them down he doth will part of his Land shall be sold to pay his Debts; after his death one of the Creditors doth pay the money at the day of the Mortgage, yet the surrender was enrolled, and another Creditor sued him and the Heir here, and had a decree that the Land should be sold to pay the Debts, and if any remained it should go to the Heir: *Caries Reports*, 7.

WWhere there was Lessee for years rendring Rent and two men striving for the Reversion, he exhibiting his Bill against him, upon payment of his money into Court, according to his lease, he had an injunction to forbid them both any further to trouble him: *Caries Reports* 46. & 47.

Where the Conusee of a Statute extend the land in the hands of one of the Purchasers, and spare other Purchasers: In this case he may be compelled to extend upon the whole in all their hands; *Caries Reports*, 111, 112.

Where a man grants a Rent charge out of all his lands, and after sels it by parcels to divers persons and the Grantee force one only to pay it, the party so paying it may here be relieved, and force the rest to contribute, and the Grantee to take no more of him then what is answerable to his proportion of land; But in such case he must be sure he make all that have bought any of the land, *Defendants*, that so he may make them chargeable with the Rent, and then they must shew cause why they should not contribute: *Caries Reports*, 2, 23. 92.

Whe

When the Conuſee in a Statute, or *Plaintiff* in a Judgment hath received ſatisfaction, the *Plaintiff* in Chancery, or Conuſor, his Heirs, Executors or Adminiſtrators; or a Purchaſer charged or chargeable by it, may force him if he bee living, or his Executors, or his Adminiſtrators, if he be dead, to acknowledge ſatisfaction upon the Judgment, or to deliver the Statute: and if Statutes be very ancient, and nothing done upon them, this Court will inforce the Owners of them to deliver them up without ſatisfaction. In like caſe this Court will force the delivery of old Bonds. *Tothill* 178, 179. *Caries* Reports, 145, 146.

Where the *Plaintiff* had judgment and Execution againſt the *Defendant* for three hundred pounds, he was by this Court here ordered to take it out for 100 l. only: *Caries* Reports, 51.

Where a man upon an Obligation, *&c.* either at, or after the day according to Law, hath paid any money, and hath no acquittance for it, or have otherwiſe at, or after the day ſatisfied it, and hath no acquittance for it, and it appears the Obligee hath accepted it, and is ſatisfied, and yet keeps the Bond, and refuſeth to give the party a diſcharge: in theſe caſes he or his Executors, *&c.* after his death may inforce him, his Executors, *&c.* after his death in this Court to diſcharg it, and to deliver up the Ingagement: *Caries* Reports, 74. *Tothil*, 26, 27.

Where a man doth his utmoſt indeavour to pay money at the day, and to that purpoſe after hee hath provided it, he is robbed, or let by ſome other chance, and afterwards makes tender of it in ſome ſhort time ſowhere part of the money is paid, and yet the whole Ingagement lies, and the party that hath it doth refuſe to deliver it up, or to receive the reſt of his money, it being tendred ſhortly after the day, or acknow-

ledge what is paid, *&c. Caries Reports* 1

So where the Bond is to do any thing other the the payment of money, and the thing is done, an the Condition performed, *Caries Reports* 45. 46.

Where a man takes a double ſecurity for one an the ſame debt, as where he takes a Bond or a Bill an goods in pawn, or any thing of the ſame natur this Court will inforce him that hath taken this do ble ſecurity, to deliver up one of them, *Tothill* 2 and 27.

Where I appoint a Scrivener to put out and r ceive my money, and by my direction he doth recei the money due upon a Bond at the day, and t Bond remain in my hands, and I refuſe to deliver up, this Court will inforce the delivery of it up, *Hun caſe* 22 *Jacobi Tothill* 175.

Where a man enters into a bond or any other I gagement, for money unlawfully gotten, as at Di or Cards, or upon a cheating contract, or the lik this Court will ſee him releived againſt it, and ha it took up or cancelled: *Tothil* 23, 24.

Where a man gives an Ingagement for that that nothing worth, and which is neither gain to the O ligor nor loſſe to the Obligee; as for debts, thin in Action not recoverable, here this court will gi reliefe.

A. had a Son he intended to preſent to the Chur of *Dale*, and he being ſickly preſented C. for the pr ſent, taking Bond of him of 600 l. to reſigne upo requeſt: C. is inſtituted and inducted. After th Son of A. becomes healthy, and C. is required to r ſigne, he refuſed, his Bond is ſued, and he comes in this Court for Reliefe, it was denyed to him, and th Bond agreed to be good in Law and Equity: *Trin 6 Caroli. Wood and Berries caſe* in Chancery, *Toth* 26, 27.

Whe

Where a man makes a Bond not to marry without the conſent of Friends, and the Bond becoming forfeit, is ſued: it ſeems this Bond is not good, and this Court will give the Obligor releif, *Tothill* 26.27

Where money is paid upon the redemption of a Mortgage by Indenture, without taking any acquittance; this Court will inforce the Mortgagee to bring in the Indenture to be cancelled here: *Caries Reports* 17.

The Son and the Father were bound to the defendant in 500 l. to ſtand to the award of the Lord Cheif Juſtice, who ordered that the Son who was Plaintife, and had the Reverſion in Fee, and the Father who had the Eſtate for life, ſhould make ſuch aſſurance as the Defendant ſhould reaſonably deviſe. The Defendant in purſuance therof tendred an aſſurance to the Father to be ſealed, who being old and blind, deſired time to adviſe with his friends, the Plaintiff the Son ſealed, and the Father did afterwards offer to ſeale, and then the Defendant ſaid, he did not care for his ſeal, but he put the bond in ſuit upon the Fathers refuſall formerly, and it was ſaid by order of this Court: *Caries Reports* 105.

In any of the afore recited caſes, if the party to whom ſuch ingagement is made, make uſe of it in any other court by way of ſuit againſt him that entred into it; he may in this court by injunction ſtay the ſuit, and ſhall have the matter ordered here as in equity is fit to be done: *Tothill* 23, 24 *Sucklyns caſe* 11 *Caroli.*

This court gives releiſe againſt the injuries of other courts of juſtice by their over-nice and ſtrict obſervation of the Rules of the Law.

Where there is an extremity uſed againſt a man upon a judgement had againſt him in any court at Law, for money or Land; this court although it will not

not make void the Judgment yet will it order the persons as it ſhall ſee cauſe in Equity, and this was reſolved upon a ſpeciall debate by the Kings Command in 14. King *James.*

In all caſes tending to overthrow of Judgments had in other Courts, this Court neither may nor will not examine or revoke them, for if ſo, it would render buſineſſe endleſſe: See *Caries* Reports, 74, 75.

The Heire coming into his Fathers Houſe, had of his Fathers Goods worth five ſhillings, and the *Defendant* ſued a bond of five hundred pounds againſt the Heire as Executor of his own wrong, and proving he ſold or gave away the Goods; a verdict paſſed for the whole five hundred pounds, which appearing by the Certificat of the Juſtices of Aſſize, an iniunction was granted to ſtay all proceedings in this Action, and to forbid any new action, till the Court have determined the matter, *Caries* Reports, 49

A debt upon a ſingle Bill ſatisfied, and the Bill not delivered, was ſued, and Execution gotten, and the party was by this Court relieved, 22 *Eliz. Owens* caſe, *Caries* Reports, 74.

If one man doe unduely get a Judgment in any Court in the name of another, relieſe may be had here: *Caries* Reports. 76.

A drunken man being ſued by another for words ſpoken in his drink, tending to defamation, ſought for Relief here, but could have none: *Qui peccat ebrius, luat ſobrius, Caries* Reports, 93.

One exhibited his Bill for Relief upon an Obligation of three hundred pounds, which he entred into, conditioned for the making a joynture to his wife upon conſideration of one hundred ſeventy four pounds promiſed to him by the *Defendant* in Marriage, which

which was never paid to him; he sued at common Law upon the bond: In this case an injunction was ordered to stay proceedings, *Caries Reports* 112.

In what cases the Tenant Copy-Holder shall be relieved, against the hard dealing of the Lord of the Mannor.

First, If the Lord will out his Tenant that payes his Rent or does his Services, or if the Tenant surrender in Court to the use of another, and the Lord refuse to admit him, to whose use the surrender was made, or will not keep Court for the benefit of his Copy holder, or exact uncertain fees, they being certain; this Court in these cases will give Relefe

Secondly, If he will not admit the Tenant copy-holder upon a Discent.

Thirdly, If the Tenant Copy-holder be outed of his copy-hold, and the Lord will not hold a Court whereat he may sue for his Right.

Fourthly If a False judgment be had against a Tenant Copy-holder, and he petition to the Lord to redresse it, and he refuse.

Fifthly, If the Tenant Copy-holder petition the Lord to grant him a License to let, and he refuse it.

Sixthly, A woman Copy-holder for Life, the Reversion is granted to two for their Lives, *cum post mortem, vel foris facturam* of the woman, it shall happen, and shee take a husband that doth surrender to the first in Reversion, who is admitted & dyeth, & after

after the next deſi eth admittance, and could n have it, but the Lord entreth as an Occupant (he might) and the Husband and wife were willin to ſurrender to him in the Reverſion for life, an the Lord refuſing to keep a Court or leave the po ſeſſion, was ordered to do both in this court. *Toth* 3. 44. 45. *Caries Reports* 3. *Kitchin* 82. 89.

A copy-holder granted by the Lord, at a cou held out of the Mannor, made good againſt the Lo by decree of this court. *Markes caſe*, *Tothill* 45.

Where the Lord impoſes an unreaſonable Fin upon his Tenant upon a Surrender, *&c.* The re ſonableneſſe of the Fine ſhall be here adjudged o and this court will give reliefe. A years value the Land hath been here allowed good, *Caries Rep.* 5

This court gives relief to the ſurety againſt th principall Debtor or creditor.

Where there is a Debtor with a ſurety, and cre ditor, and the principall Debtor, and creditor, b compact, and agreement without the privity of hi who is Surety, continues the Debt after the firſt da of payment, when the ſurety doth ſuppoſe it to b paid: In this caſe this court will compel the credito to take his Reliefe from the principall Debtor, an diſcharge the Surety, his Heirs, Executors, *&c* *Miles caſe*, 5 *Caroli*, *Hares caſe*, 10. *Jacobi*, *Tothi* 181.

Where there is a detainer of any Lands, Deed or Goods, this court will give reliefe towards th Diſcovery and Recovery of them.

As where a man hath title to Lands and intends t bring his Action, but cannot diſcover who is Tenan to the Land: In this caſe he may ſue the Occupie in this court; and he will be inforced to ſhew wha he, or any under whom he holds, claims to his know ledge, and then hee may know whom to ſue, and up onwhat grounds.

VVher

VVhere the Defendant held beyond his term, his Court inforced him to ſhew what Terme his caſe was for; *Mich. 6 Caroli, Tothill*, 183.

The Conuſee of a Statute did by the power of this Court inforce a Leſſee for years to declare all the particulars of his Leaſe, that ſo he might diſcover whether it were extendable or not, 11 *Caroli, Tothill*, 83. *Creſwells caſe, Tothill* 9. *Caries Rep.* 16

Where writings are detained from a man, if the Court do ſee cauſe, it will inforce the Defendant to bring the Writings into court by a *Duces tecum*, *Caries Rep.* 43. 52. 53. 67.

This court gives reliefe for the recovery of Land, Debt, or duty, where the Law gives none.

Where a man hath juſt Title to Land, but hath loſt his conveyances, this court will give reliefe for the recovery of his land, *Caries Rep.* 24. *Goſſats caſe.*

Where a man hath good Title to Rent, but noe meanes to gaine it and if it be a Rent ſeck, and he never had Seiſin of it or any other Rent wherein he hath had no attornment of the Tenant, or ſuppoſing the Rent is by ſome accident (without any recompence) for it diſcharged: So if it hath beene uſually paid, but I can ſhew no Deed for it: In theſe and the like caſes this court will give reliefe for the recovery of it; *Tothill* 172, 172, 173.

Where a man hath a Debt due to him upon eſpecialty, and hath loſt his VVriting, or cannot come at it: In this caſe if he have witneſſe to prove it, hee may be relieved here for the recovery of it, *Caries Rep.* 25.

VVhere an *Elegit* was returned and filed, and the time thereof elapſed, and yet the Plaintiffe unſatisfied of his Debt, this court will give him relief by reviuing the *Elegit*. *Tothill* 179

VVhere a man makes a Will with ſeverall deviſes

ſes, this Court will direct how they ſhall be take and performed in Equity.

The meaning of a Will is to be performed her *Cobs caſe Tothil.* 141.

VVhere there was a Deviſe void in Law, by re ſon of a miſ-recitall of a Grant, and lack of an A tornment, this Court did here decree it to be goo *Bacons caſe, Tothill* 79.

This Court doth give relief againſt a fraudule practiſe to avoyd a leaſe, *Caries Rep.* 18 *and* 22.

So likewiſe to avoid a Debt, *Caries Rep.* 18.

This Court will give reliefe in avoiding conve ances fraudulently made, as where there is a Suit de pending between two for land, and the Defen dant hanging the Suit, make ſecret conveyances o the land, this Court will order him to diſcharge th land thereof, *Tothil*, 108. *Harbynes caſe Tot* 9.

Thus much ſhall ſuffice to have ſpoken concerning the g nerality of the cauſes the Court of Chancery tak conuſance of, in which for your further ſatisfaction, referre to the Reports of M Tothill *and Sr.* Georg Carew.

It remaines we ſhould now come to the practi part of it, which directeth for the moſt par their whole manner of proceedings where for methods ſake we will begin with the firſt proceſſe, called a Subpæna.

THis *Subpæna* is the leading proceſſe of this Cour as to the procedure by Bill and Anſwer, and th dot

th require the *Defendants* appearance in this Court
a certain day under a certain paine, to make an-
er to the complaint of the *Plaintiff*, which is in-
ed the Bill, which formerly was wont to be put in
fore the *Subpœna* was ſued forth, but now otherwiſe
ed: this is called a *Subpœna* to anſwer, and diſtin-
iſhed by that name, in reſpect there are ſevrall o-
er *Subpœnas*, in order to further proceedings, as a
bpœna for coſtes a *Subpœna* to make a better anſwer,
Subpœna to rejoyn, a *Subpœna* to heare judgment, a
bpœna for Witneſſe to teſtifie, *&c*, A *Subpœna Du-*
s tecum. for Writings, Evidences, *&c*.

Touching the *Subpœna* to anſwer, you muſt be ve-
carefull there be no miſtake in the body of the writ,
that may prejudice the *Plaintiff*, and the *Defendant*
y take advantage if he finde any; but if there be
miſtake in the Labell only of the writ, no advan
ge is to be taken by it.

This writ may be made returnable two waies, either
on the common dayes of retnrn, as from the day
Eaſter in fifteen dayes, *&c*. or upon a day cer-
in, after any of the uſuall Returnes, or after any
great Feaſts, from whence the Returns take their
mes.

This word (*Next*) muſt be added where it is re-
uiſite, as where the great Feaſt be either to come or
aſt.

The writ of *Subpœna* is to be ſerved before the Re-
rn thereof be paſt, which they uſually do, either
the delivery of the writ it ſelfe under ſeale to the
erſon of the *Defendant*, or by ſuing the Writ un-
r ſeale unto him, delivering him a Note or Labell
the day of his appearance; and this is more uſuall
hen there are more perſons then one in the *Subpœna*,
hereby the body of the Writ may be reſerved to be
ſt with the laſt.

Or

Or elſe the Writ may be left at the Defendant dwelling houſe with on of his Family, or at his plac of reſidence, See collection of orders, *&c.*

It is conceived it may be a good Service to leav the Writ hanging upon the Door of the houſe, or put it into the houſe under the Door, or within th Window of the houſe where the party doth dwell o uſually reſide at. But that is where it is perſumed afterwards comes to his hands, or that he might be i the houſe at the time, or had notice of it.

Where a *Subpæna* is ſerved on the ſelfe ſame da whereon it is returnable, it is a good ſervice if it b before Noon, and the riſing of the court in chan cery: And the Defendant ſo ſerved ſhall be boun to an appearance with all ſpeed.

Where a *Subpæna* is had againſt Husband an VVife, and the Husband alone is ſerved, an hath notice that it is againſt him and his VVife; th is a good Service as to both, and for want of appe rance, an Attachment may be had, either againſt th wife only, or againſt both. To which purpoſe ſee *Cari Reports* 89. 101. 103. 106. 109. 110.

The *Subpæna* being ſerved, the Bill muſt bee pu in in due time, or elſe if the Defendant appear an no Bill filed, they will get coſts: To prevent which take notice what time is preſixed for exhibiting the Bill after the day of the Return of the *Sub pæna*.

If the *Subpæna* be returnable upon a genera return-day, as *Craſtino*, *Octabis*, *Tres. Menſe*, *&c.* a ter ſuch or ſuch a Feaſt, then hath the Plaintiff tim to put in his Bill untill the ſecond day before Noon next following, the fourth day following every o the ſaid returnes, and you muſt account the return day, and the fourth day after it for two of the ſai foure daies.

But where the *Subpæna* is returnable upon ſuch or ſuch a certaine day of the month, then the Bill muſt be filed the ſecond day after, before Dinner.

Where the Bill is not filled, and the *Subpæna* returnable on a day certaine, as on any day of the Month, the Defendants appearance being entered, his Attorny may prefer coſts the next day after: And if the Bill come not in the next day after coſts ſo preferred before noon, or preſently after Dinner, the Defendant is diſcharged with ſuch coſts as the Maſter of the Court taxes him.

Where the *Subpæna* is made returnable on a return day, in ſuch caſe the fourth day after the next day is coſts day; and if the Bill come not in the next day at noon, or preſently after dinner, (the *Defendant* having preferred his coſts the day before) is diſcharged from Attendance with his coſts.

Where the coſts are not voluntarily paid for want of a Bill, either by the *Plaintiff* himſelfe, or his Clark, to the *Defendant* or his Clerk, in ſuch caſe the *Defendant* may have a *Subpæna* whereby to command the *Complainant* preſently upon ſight thereof to pay the *Defendant*, or the bringer thereof the ſaid coſts: And his *Subpæna* muſt be ſerved on the *Plaintiff* perſonally, and upon ſuch ſeruice, if the *Complainant* doe refuſe to pay the ſaid coſts accordingly, in ſuch caſe the *Defendant* may (upon *Affidavit* made, that the *Subpæna* for coſts was ſerued) have an Attachment directed to the Sheriff of the County where the *Complainant* lives, to attach the *Complainant* for the ſaid Coſts.

And if the Sheriff of the County make return upon that Attachment, that the Complainant cannot be found, then an Attachment with Proclamation may be ſued forth againſt him: And that Proclama-

tion being likewiſe returned by the Sheriff as a
fore ſaid, then a Commiſſion of Rebellion may b
ſued forth againſt the complainant.

On the other ſide if the Plaintif do in due tim
file his Bill, and the Defendant appeareth not th
next day after coſts day, then the complainant upo
Oath made, that the Defendant was ſerved with
Subpæna, may have an Attachment, and further pr
ceſſe, in caſe the Sherif return, the party is not t
be found, *&c.*

The *Affidavit* that muſt be made of the Servic
of the *Subpæna*, muſt be made according as th
manner of the Service was: for if the *Affidav*
made do not prove a good ſervice as before, no A
tachment, can be had upon it, and therefore h
muſt ſwear as followeth.

That he delivered the *Subpæna* to the Defen
dant, or that he ſhewed the *Subpæna* to the Defen
dant, under the Seale of the Court, an
delivered to him a Note of the day of his a
pearance, or a Label of the *Subpæna*.

Or that he left the *Subpæna* at the Defendan
dwelling houſe or lodging where the Defendan
moſt abideth.

Or he may make *Affidavit*, that he heard the De
fendant confeſs that he was ſerved with a *ſubpæna*.

If the party that makes *Affidavit* can ſweare, tha
he ſaw another (naming him) ſo ſerve the Writ
before; this will be ſufficient to maintain the A
tachment.

There can be no Attachment regularly mad
out againſt the Defendant for not appearing, un
till there be a certaine and poſitive Oath made
the Time, Place, and Manner of ſerving the Sub
pæna, inſerting the return of the VVrit.

And where any perſon ſerved with a *Subpæna* d
injury

injury, or wrong, either by word or deed to the party who acted in the Seruice of it, or doth set at naught, or contemn the Writ it selfe, or the Authority of the Court from whence it issues, upon Oath made thereof, and motion thereupon, such person will be committed to the Fleet, *&c. Caries* Reports, 91, 92. 110.

Where there is appearance made by the *Defendant* within the time limited, and by the Bill filed: in such case the *Complainants* Attorney may give unto the *Defendants* Attorney on the next day after the Costs day a Rule, that the *Defendant* doe make answer to the *Complainants* Bill by the same day seven night then next to come: this Rule and day must be entered into the Register; and in case the *Defendant* faile to make answer, by that prefixed day so entred, or he do not otherwise satisfie the Court, by shewing sufficient cause and occasion of such his delay, then the *Complainants* Attorney may have an Attachment against the *Defendant*.

Now this writ of Attachment cannot be duly had, but where the *Subpæna* foregoing is duly obtained and served, for if the *Subpæna* be counterfeit, or if true, and not legally served, this Writ of Attachment in these cases is unduly obtained, & the *Defendant* arrested by it, upon disclosing the matter to the Court, will be discharged thereof.

An Attachment duely gotten for not appearing, may not be discharged, till the *Defendant* have first payd twenty shillings costs, if the serving of the *Subpæna* were upon his person, otherwise it is ten shillings, and every succeeding processe double so much: and upon payment hereof he is to be discharged of Course: See *Caries* Reports, 32. 72. 79. 94. 105, *Tothill.* 15,

The Husband appeared, and the Wife not, an At-

ment was granted againſt them both: *Abells* Caſe, 19. *Eliz. Caries* Reports, 65.

So he alone appeared, and put in a Demurrer in both their names, without excuſing her Attachment was granted againſt both: *Spicers* Caſe, *Caries* Reports, 39.

The *Defendant* made Oath, he could not anſwer without ſight of Evidencees, and had time given him and then afterwards put in a Demurrer: this VVrit went out againſt him, *Paſch.* 21. *Eliz. Farmers* Caſe.

Where the *Defendant* is ſerved with a *Subpœna* and afterwards for not appearing an Attachment iſſues againſt him; if he doe not appear upon the Attachment, and the Sheriffe do thereupon return (as in the like caſes he doth) a *Non eſt inventus* then there will iſſue forth againſt him a Proclamation of Rebellion, where in obſerve, that this proceſſe of contempt, and all Attachments in proceſſe are to be diſcharged upon the *Defendants* payment, or tender and refuſall of it, by the *Plaintiffs* Clark of the ordinary caſes of Court, and filing of his Plea, anſwer, or Demurror, as the caſe is without any motion in Court: And if the *Plaintiffe* doe proſecute the contempt, afterwards the *Defendant* will be diſcharged with coſts.

Where an Attachment is had, if the Sheriffe do not make his Return, a day will be given, and if he do not by that time, the Court will ſet an Amerciament upon him: See *Caries* Reports, 44. 77, 78. *Collection of Orders, Tothill* 15.

Where any party is attached, and afterwards proclaimed, and he comes not in, but ſtands further off in contempt, in ſuch caſe a commiſſion of Rebellion may be iſſued forth againſt him for the apprehending of him, and bringing him to the *Fleet* (the proper Priſon of this Court.)

The

This Commiſſion of Rebellion is ſometimes directed to the Sheriff, and ſomtimes, to private perſons, as in the caſe of *Caze* and *Elrington*, *Trinity* 30. *Jacobi*, *Tothil* 37.

This courſe is likewiſe taken againſt thoſe that make not obedience to Orders or Decrees, to pay coſts or the like.

Where thoſe private perſons who are made Commiſſioners, having taken the perſon in contempt, ſuffer him to eſcape, they themſelves will be commit, ted till they bring him in; as in the caſe of *Sacheverell* againſt *Sacheverell*, *Hillary Term*, 18. *Jacobi*, *Tothill* 38.

If any perſon reſcue one taken upon a commiſſion of Rebellion, the Reſcuer is to be committed.

Where the Commiſſioners upon a commiſſion of Rebellion, let the pa ty in contempt go where he liſted, whereby he made an eſcape, they where ordered to be commited to the Fleet till they pay the Debt: See *Nelſons* caſe againſt *Yelverton*, in *Trin.* 18. *Jacobi Tothill* 39.

Where the party appeares not, but ſtands further out in contempt, a Serjeant at Armes may be ſent out to take him: and if he cannot take him, or that he reſiſt or having taken him he make an eſcape, and ſo perſiſt high in his contempt, in ſuch caſes a Sequeſtration may be had of his Land: and if the Suit be for Land, a Sequeſtration and Injunction for the profits of the Land to be delivered to the Plaintiff by the Sheriff, or by other Commiſſioners for that purpoſe: as in the caſe of *Boles* againſt *walley* and his Wife. *Caries* Reports, 38. 58 105, 106.

We proceed now to Bill and Anſwer.

THE Plaintiffs Bill is in effect the ſame that the Declaration after appearance had is either in the Upper Bench or common Pleas, and laies downe the cauſe of his complaint in Chancery, being ſuch uſually as is exempt from remedy at common Law, for that they inſert commonly theſe words in the Bill, that the Plaintiff hath not remedy at Law.

This Bill by the practiſe of the preſent times may be put in after the *Subpæna* is both taken out and ſerved, provided it comes in within the time before limited, to prevent coſts.

Upon one and the ſame *Subpæna* ſerved, two Bills may be put in, provided the matter contained in them appear not to be one and the ſame cauſe, for if it do ſo, one of them may be diſmiſſed with coſts, and where two Bills are ſo put in containing ſeverall matters, the Defendant muſt anſwer them both.

This Bill in Chancery, and all ſubſequent Pleadings and proceedings upon it, muſt be ſuccinct and ſhort, and not ſtuft with repeitions of Deeds, Writings, or Records (*in hæc verba*) but the effects and ſubſtance of ſo much of them only as is pertinent and materiall to be ſet downe, and that in briefe tearmes, without long and needleſſe Traverſes of ſuch things not traverſable, tautologies, or impertinences.

It muſt not likewiſe contain any matter criminall or ſcandalous againſt the Defendant, or any other; and if it do, and concern the Defendant, he may refuſe to anſwer it; and the Plaintiff and his Counſell whoſe hand is to the Bill, may be puniſhed for it, and the party grieved may recover coſts againſt ſuch Counſell.

This Bill muſt be put in under Counſels hand, who is

s carefully to p ruſe it, if at leaſt it be not drawne y himſelfe, and ſo that it be ſuch as is before dire-ted, and likewiſe the Counſell muſt take care that it e ſuch for the matter of it as the Court will allow, nd take Cognizance of, and then he is to ſigne it.

Where any Bill containes matter not proper for his Court to give relief in, the Bill will be diſmiſſed, and ſo likewiſe will it be, if there want Counſels hand to the Bill, or if the Counſels hand be counterfeit or diſallowed, See *Caries* Reports, 89.

To this Bill in Chancery filed, the Defendant is to make anſwer, wherein many times he makes much delay: but in all caſes of delay, he muſt upon Oath ſatisfie the Court of the cauſe of ſuch his delay, which may be in ſeverall reſpects; as

Firſt, where the matter contained in the Bill is ſuch, as to which he cannot give anſwer, without conference had with ſome other perſons named in the Bill, or to whom the Bill refers.

Secondly, where the Bill charges the Defendant with the having of Goods or Chattells of the Complainants, to make diſcovery what they are; in ſuch caſe the Goods being in the Country, and he here, hee may make Oath he cannot make perfect anſwer to the Plaintifs Bill without ſight and peruſall of the Goods: So likewiſe where he cannot make direct anſwer, without ſight of ſome Evidences or Writings which he hath in the Country, he may make Oath thereof; but in ſuch caſes, that place in the Country where thoſe parties live, Goods or Writings, or Evidences lye, muſt be above twenty miles from *London*, for elſe he muſt anſwer within eight dayes after his appearance, unleſſe further time be given him by order.

Upon Oath made as aforeſaid, then his anſwer

will be ſpared till the firſt day of the next Tearm following.

There may likewiſe Oath be made by another perſon, either his Solliciter, Servant, or ſome Neighbour to the *Defendant*, that he is ſick, or diſabled for travell without danger of life.

Upon ſuch Oaths made as aforeſaid, if the *Plaintiff* refuſe to allow of a *Dedimus poteſtatem* on the behalfe of the *Defendant*, for the taking his anſwer in the Country; This Court of Chancery upon motion or petition will order it, and the order that is ſo obtained muſt be carefully entred in the Regiſters Office, and the *Affidavit* upon which the Order is grounded muſt be filed in the *Affidavit* Office.

Where the *Defendant* doth not appear, or that after he hath made his appearance, he doth not anſwer within the time limited him, nor by way of excuſe ſheweth any reaſons aforeſaid, in ſuch caſe an Attachment as is aforeſaid is awarded againſt him, which Attachment muſt be entred into the Houſe Book of the ſix Clerks Office, and likewiſe in the Regiſters Book, expreſſing the cauſe of the iſſuing of the ſaid Attachment.

Where there is no day by rule given to the *Defendant* to anſwer, in ſuch caſe the *Defendant* is at liberty to anſwer at any time during the Term.

And where the *Defendant* makes default within that time to make anſwer, then an Attachmtnt may be ſued forth againſt him of courſe, and the ſame with the cauſe thereof (as before) muſt be entred with the Regiſter (*viz*) That the *Defendant* appeared, and went away without any anſwer.

Where the *Subpœna* is made returnable ſo neer the end of the Terme, that there cannot be a day given to the *Defendant* to anſwer: in ſuch caſe the

Defendant

Defendant muſt at his perill anſwer by the ſame day ſeven-night nextfollowing the day of his appearance, although it be out of Term, for the Court of Chancery is always ſaid to be open.

Where the *Subpæna* is returnable on the laſt return day of the Tearm it ſelfe, then the *Defendant* is at liberty to appear the firſt return of the Tearm following.

But where the *Subpæna* is returnable upon a day certain, although the day be the laſt day of the Term, yet the *Defendant* is bound to appear and anſwer by that day ſeven-night next following the ſaid appearance.

In all caſes where the *Defendant* either makes Oath that he cannot anſwer without Writings, Evidences, *&c.* or conference with ſome other perſon, or that he have a *Dedimus poteſtatem*, and Commiſſion to take his anſwer in the Country; the *Defendant* muſt at his perill procure his anſwer to be put in before the day, after the firſt coſts day of the next Term following, unleſſe it be in Trinity Term; then in ſuch caſe it muſt be put in the ſecond day after the ſecond return, or otherwiſe the Complainants Attorney may upon ſuch his default make an Attachment againſt the *Defendant* for not anſwering by the day prefixed.

Where the *Defendant* lives in the Country, and hath a *Dedimus poteſtatem* granted him for the taking of his anſwer to the *Plaintiffs* Bill, it hath been formerly the courſe, that in caſe the Counſell finde cauſe of Plea or Demurrer, that then the *Defendant* ſhould move, or petition to have a ſpeciall *Dedimus poteſtatem* by order to anſwer, plead, or Demur, for that the Commiſſioners upon an ordinary *Dedimus*, had not power to take any thing but an anſwer.

But

But by the late collection of Orders it is ordered that where the Defendant is ſerved with a *Subpæna ad reſpondendum*, and obtaineth a Commiſſion to anſwer in the Countrey, he ſhall without more words have the ſame liberty thereby to anſwer, plead, and demurr, as he had by the originall Proceſs, if hee could have appeared in perſon. See Collect, of Orders, 29.

Where the Defendant doth demurr, or put in any juſt Plea which he hath, to the diſability of the perſon of the Plaintif, or to the Jurisdiction of the court under the hand of learned Counſell, it will be received and filed, although the Defendant do not deliver the ſame in perſon, or by commiſſion.

And if the Defendant do not put in his demurror, or Plea into the Paper of Pleas and demurrors, in the Regiſters Office appointed for that purpoſe, within eight dayes after the ſame is put into the Court, that ſo the ſaid Demurror may be argued before the Lords Commiſſioners as it ſhall fall in courſe; and where this is omitted to be done, the Plea and demurrer is over-ruled of courſe, and the Plaintife may take forth a *Subpæna* againſt the Defendant, to inforce him to make a better anſwer, and in order for coſts according to the late rules and collection of Orders.

Where a man exhibits his Bill in Chancery, and dies, the Suit depending, who ever have the Intereſt in the thing complained for, whether Heire, Executor, or Adminiſtrator, they may put in a Bill of Revivor againſt the Defendant; or in caſe the Defendant dye, the Plaintif may exhibite his Bill of Revivor againſt the Heirs, Executors or Adminiſtrators of the Defendant.

Where there is a Bill of Complaint exhibited againſt a man and his Wife, and the matter contained in

in the Bill wholly concerns the wife, and they both make anſwer unto this Bill, and after they have made anſwer the Husband dies; in this caſe a Bill of Revivor muſt be brought by the Complaynant againſt the woman, if hee intend to proceed in that Suite; and the reaſon is, for that the woman ſhall not be conſtrained to abide by that anſwer, which ſhee, together with her Husband, or ſolely as wife unto the man, hath formerly made to the Complaynant, for that ſhee was at that time under coverture,

And in caſe ſhee ſurvives her Husband, and continues poſſeſſed or ſeiſed of the thing in controverſie, in *Statu quo*, ſhe may as ſhee ſhall think fit make a new anſwer, and ſhall not be bound up or concluded by that anſwer which ſhe made during coverture, or ſolely as Wife unto the man: and yet if ſhe thinks fit, ſhe may ſtand to that former anſwer of hers, and proceed accordingly in that Suit.

Where the Plaintiff exhibits his Bill in Chancery againſt a femme ſole, and ſhe appearing, makes anſwer unto the Bill, and afterwards marrying, ſhee comes under Coverture, the ſuit Depending. In this caſe the Plaintiff may proceed againſt her and her Husband, and ſhall not need any Bill of Revivor: and her Husband ſhall be bound by that anſwer, which ſhe made whilſt a femme ſole, for that ſhe ſhall not advantage her ſelfe by her one act.

Where on the other ſide a femme ſole Plaintiff exhibits her Bill, and the Defendant makes anſwer unto it, and afterwards ſhee intermarryeth, here there can be no further proceeds by the Husband and Wife without a Bill of Revivor, becauſe ſhee hath abated her ſuit by her own act of marriage, of which the Defendant may take his beſt advantage.

Where

Where the Man and the Wife exihibit a Bill of Complaint, and to this the Defendant answereth, and the Man dyeth, the VVoman shall be at her choise whether shee will exhibit a new Bill, or proceed upon the Bill by her Husband and her selfe formerly exhibited,

VVhere there are two seized of joynt Estates, or where they are Executors of one Will or Obligees, or Obligers; and they prefer a Bill in Chancery, to which the *Defendant* makes answer, and after one of them dye, here the Survivor may proceed in this suit against the *Defendant*, and shall need no Bill of Revivor.

Note, that the Bill of Revivor must pursue the first Bill exhibited; for where there is any variance between them, the *Defendant* may be discharged, and the Bill will be dissolved.

Where there are Administrators; *Durante minore ætate* of an Infant Executor, in the nature of a Guardian, and they sue on the Infants behalfe, and the Suit depending, the Infant comes to age, here it seems there needs no Bill of Revivor.

Where the Complainant hath exibited this Bill of Revivor, and hath procured thereupon a *Subpæna* to be served; he will be upon this in the same case, as the Predecessor was, when the Bill first accrued, unlesse some good cause to the contrary (as that he is not Heire, Executor, nor hath the like interest, *&c.*) can by the Defendants answer bee shewed.

Where a man doth willfully refuse to answer, and stand out all the Processe of contempt the Court will take the matter of the Bill *pro confesso*, and decree it, *Tothill 69.*

If the answer be good to common intent, the Plaintiff must reply and prove the matter if he can, and not

not inſiſt upon inſufficiency of the anſwer.

No exception can be taken to an anſwer after a Replication put in, for it is then admitted to be good, but before Replication it may be excepted againſt

But where it is excepted againſt, the cauſes muſt be ſhewn in writing, and delivered into the *Plaintiffs* Attorney or Counſell, the ſame Tearm the anſwer comes in, or within eight dayes, after; and if he amend it in eight dayes, he is to pay no coſts.

Where an anſwer is excepted againſt to be inſufficient, it is uſually refered to a Maſter, to conſider of the Exceptions, and he to certifie the Court whether it be inſufficient.

If the Maſter certifie it to be inſufficient, then the *Plaintiff* may take out Proceſſe for coſts, and the *Defendants* anſwer is not to be received till he hath paid the coſts.

The firſt anſwer being returned inſufficient, the *Defendant* muſt pay forty ſhillings ſingle coſts.

If it be an anſwer that came in by Commiſſion, and be inſufficient, he muſt pay fifty ſhillings.

The ſecond anſwer inſufficent paies three pounds

The third five pounds coſts, and you may have a *Subpœna* both for your coſts, and to make better anſwer.

But in theſe caſes of Exceptions, the inſufficiencies appearing in the ſame Exceptions, are the point to be inſiſted on, and no new Exceptions may be moved.

VVhere the Maſter upon reference to him finds the anſwer to be ſufficient, and accordingly certifies, there the *Plaintiff* muſt pay forty ſhillings coſts

If the Exceptions to an anſwer be put in after the Term, there ſhall be time given to anſwer them untill the fourth day of the next Term, unleſſe the Court haſten it.

If

If the anſwer come in by commiſſion, and be not good, no new Commiſſion will be admitted but upon Oath of the inability of the perſon, and his payment of fifty ſhillings coſts as before.

Where a cauſe goes to hearing upon Bill and Anſwer, the ſame muſt be admitted to be true in all points, and no other Evidence is to be admitted, but what is matter of Record, to which the anſwer doth refer, and which is provable by the Record it ſelfe: *Careis* Reports, 78. 30.

Concerning Demurrers and Pleas, take theſe Rules following.

FIrſt, A Demurrer is alwayes where there is matter defective contained in the Bill, or where there is forraign matter.

The Plea of forraign matter may be of two ſorts; Either where it is to the Juriſdiction of the Court, or to the diſability of the perſon, as where the *Plaintiff* is outlawed or excommunicate, or where there is in this or any other Court a Bill or ſuit depending for this very cauſe.

Or it may be that the cauſe hath been formerly diſmiſſed this Court or the like.

Or if the matter of it appear upon Record, it may be put in without Oath, otherwiſe not.

In caſe it be a Demurrer, it muſt expreſſe the cauſe of the Demurrer, yet other cauſes may be inſiſted on at the time of the determination thereof by the Court.

If the Demurrer be over-ruled, the Defendant ſhall pay five Markes coſts, and where it is allowed, the Defendant ſhall have no coſts.

If

If one plead a plea that is insufficient,& so overruled to be, as where it is an Outlawry pleaded, and it is not a good Plea, he must pay five Markes costs.

An Outlawry is not to be pleaded, unlesse you plead the Record, *sub pede sigilli.*

A plea of Outlawry, if it be in a Suit for the same thing for which a man sueth to be relieved in Chancery, is not to be allowed; but otherwise it is allowed, and will be in force to hinder all the Plaintifs proceedings till it be reversed.

But when it is reversed, the Plaintiff upon payment of twenty shillings costs, may upon a new *Subpœna* served, put the Defendant to answer the same bill.

Where the Plaintiff conceives the Plea for matter or manner naught, he may put it to the Judgement of the Court.

VVhere a man pleads a former suit, hee need not set it down with the Register, but it shall be referred to a Master to certifie (which must be done within a moneth upon the Plaintifs procurement.) And if the Master do certifie against the Plaintif, he must pay five shillings costs: If there be no Report within a moneth of filing the plea, the Bill will be dismissed of course, with seven Nobles costs.

If the Demurror to any Bill be put in upon any slip or mistake in the Bill, the Plaintiff of course laying down to the Attorney twenty shillings costs, may amend his Bill within eight dayes after the Demurror put in, but not after that time.

If the Demurror be admitted by the Plaintiff to be good within eight dayes after the filing of it, and he doth pay the Defendant his Attorney, or Clark in Court forty shillings costs, then the Defendant shall not need to attend his Demurror, but the Bill shall stand

ſtand diſmiſt of courſe without Motion, unleſſe both ſides agree to the amendment of the ſame, but ſuch diſmiſſion is to bee no bar to a new Bill to be exhibited by the *Plaintiff*.

where the *Plaintiff* finds ſufficient cauſe for an Order in the anſwer, he may goe to hearing thereupon whithout further proofe, (of which he ſhould be well adviſed) in which caſe he muſt procure his Attorney to preſent the ſame in courſe, to be ſet downe to be heard upon Bill and Anſwer: But in caſe the Court ſhall not find grounds to make a Decree or finall Order, the Bill ſhall be diſmiſſed with coſts, or the *Plaintiff* admitted to reply, if he deſire it, firſt paying downe five pound coſts, within foure dayes after ſuch hearing, then the diſmiſſion to ſtand, and the concluſion of order upon hearing is to be penned by the Regiſter accordingly, and then ſuch diſmiſſion ſhall be a good Plea in Bar of any new Bill for the ſame matter.

VVhere a *Plaintiff* proceeds ſo far as to proof, and upon the hearing it clearly appears the Plaintiff might haue had full relief upon Bill and Anſwer, albeit he be releived in the cauſe yet he ſhall pay coſts. See more fully of theſe things in the collection of Orders, 16. 18. *Caries* Reports, 39 87.

Replication, Rejoynder, and Sur-rejoynder comes next to be handled.

THe Replication is the ſpeech of the *Plaintiff*, in way of Reply to the *Defendants* anſwer.

The rejoynder is the *Defendants* anſwer, to the *Plaintiffs* Replication.

The Sur- rejoynder is a ſecond defence to the Plaintiffs action, oppoſite to the *Defendants* Rejoynder.

First, the Replication muſt be ſhort relatin to the ſubſtance of the Bill, and it muſt avoid ſuperfluous and criminous matter

Secondly, the Replication muſt affirm and purſue the bill, and confeſſe; and avoid, traverſe, or deny the anſwer.

Thirdly, the Reioynder, that muſt purſue and confirm the anſwer, and muſt ſufficiently confeſſe or avoyd or traverſe every materiall part of the Replication.

Fourthly, No new matter muſt be put into the Replication, and ſo much matter only is neceſſary to be there, as will avoid the matter of the Anſwer.

Fiſtly, if upon the anſwer there be ſo much confeſſed, that the Plaintiff need not to draw into pleading, and prove all the points, he muſt ſee to it, and reply, and go to proofe only in thoſe particulars in queſtion, and neceſſary to be proved.

Sixthly, VVhen the Defendant doth demurr or diſclaime to any Bill exhibited againſt him, the Plaintiff cannot reply: And if the Defendant in thoſe caſes be ſerved with a *Subpœna ad rejungendum*, having before made no other anſwer, but a Demurrer or Diſclaimer, he ſhall have coſts for unjuſt Vexation.

VVhere the caſe is ſuch, that the parties cannot come to Iſſue, by reaſon of ſome new matter diſcloſed in the Defendants Rejoynder, that requires to be anſwered unto, the Plaintiff may ſur- reioyn to the Rejoynder, and the Defendant likewiſe to the ſurrejoynder, if there be cauſe.

As for the time for the replication to be put in after the anſwer, you are to obſerve that the Plaintiff

hath time for all this Term, and all the next Terme, and untill the beginning of the second Term following to put in his *Replication*.

The next Term after the answer is put in, the *Defendant* may give the *Plaintiff* rule to reply: and if such Rule be given, and the *Plaintiff* reply not, costs will be given against him.

And where he gives no rule, and the *Plaintiff* doth not reply the second Tearm after the Tearm the answer is put in, the Bill will be dismissed with the costs of course.

But in case the *Plaintiff* doth reply, and that the Replication be in Court, the *Defendant* can have no costs.

In case where the *Complainant* hath replyed, the *Defendant* may if he will rejoyn *Gratis* to the Replication, and force the *Complainant* to ioyn in Commission.

VVhere the *Plaintiff* intends to goe to Commission, hee must serve the *Defendant* with a *subpœna ad reiungendum*, before hee can have Commission to examine VVitnesses, and upon the Return of the *Subpœna ad reiungendum*, and Oath made of the serving of it, the *Plaintiff* may by entring Rules force the *Defendant* to rejoyn and ioyne in Commission, or goe on to the Examining of VVitnesses without him; for having given him seven dayes to rejoyne, if within that time he refuse to do it, he cannot do it after.

In such case where the *Defendant* is served with a *Subpœna ad reiungendum*, and does not upon the *Plaintiffs* Clarks Demand to the *Defendants* Clark deliver Commissioners names by the end of the Tearm

Tearme, wherein this *Subpœna* is returnable, there he *Plaintiffe* may without Motion or Petition, give ames, and take a Commiſſion, *Ex parte*: See *aries* Reports, 111, and *collection of Orders in Chan-ery*.

The maner of joyning in Comiſſion, and Executing of it.

IN the joyning of this Commiſſion to examine Witneſſes, the Complainant muſt firſt name one Commiſſioner, unto whom the *Defendant* may give generall Execptions.

The *Defendant* is to name the ſecond.

The *Complainant* the third, and

The *Defendant* the fourth.

The *Plaintiff* is likewiſe to have, firſt the taking ut, and carriage of the Commiſſion, as oft as any ſued out, and he or his Commiſſioners muſt give ther in perſon, or by a note left in writing, at e place of the uſuall abode of the other party, urteen dayes notice to him of the time and place executing the Commiſſion, and if there be default en made by the *Plaintiff* or his Commiſſioners, in e Execution thereof, hee muſt pay the *Defendant* ſuch coſts as hee upon his Oath ſhall make appear hee was put to in the intending of the Commiſſion, and the *Plantiff* muſt renew the Commiſſion at his owne charge, and the *Defendant* ſhall ave the carriage of it. And ſo on the other ſide all the *Plaintiff* have, if the *Defendant* have the rriage of the Commiſſion, and it be loſt by default his ſide.

But where it becomes void by any Errour of th Clark in making of it, the coſts ſhall be borne b him, and that ſide for whom it was taken out.

Where the Defendant hath the carraige of th Commiſſion, hee muſt give notice to the Plaintiff, a is before directed, and if ſuch notice be not given, ei ther all the Examinations will be quaſhed, or other wiſe the Court will grant to the other ſide a Com miſſion *Ex parte*.

Where there hath been publication there n commiſſion can bee granted or renewed for exam ining VVitneſſes without ſpeciall Order.

VVhere a Commiſſion hath been to examine wi neſſes, without reference and certificat upon it, cannot be diſcharged upon a bare Petition.

VVhere a Commiſſion is taken out by conſent, an the one ſide at the ſpeeding of the commiſſion do p in no Interrogatories nor examine any VVi neſſes (unleſſe upon a motion, and by order of th Court) he ſhall be never after admitted to have new Commiſſion.

VVhere the Defendant had VVitneſſes to examin and they being ſerved did not appeare, but make d fault, here a new Commiſſion will be granted to th Defendant, *Caries* Reports 91. 43 *Tothill* 111. *Co lection of Chancery Orders.*

Touching the choiſe of Commiſſioners, or Examiners, and the Exceptions againſt them.

FIrſt, they muſt be men indifferent.

The Exceptions uſually taken againſt the are, that he who is named Commiſſioner is of Ki dre

dred, or allied to the party for whom he his named, and ſo may very well be deemed to ſide with that party.

Or that hee is Maſter to the party for whom he is named, or that he is Land-Lord to the party, or that hee is of his Counſell, or Attorney for him or one to whom he is indebted, or one that hath a Suit ith the adverſe party.

The Commiſſion being to be ſet upon that time and place appointed, the Commisſioners muſt call the Witneſſes before them, where if they appear not, an Atachment iſſues againſt them, unleſſe it be in ſuch caſe where the Witneſſes are impotent, and then a commisſion ſhall be awarded, to examine them where they be, but uſually they will have coſts before they anſwer,

VVhen the VVitneſſes appear to be examined, the Commiſſioners and *Examiners*, muſt examine themſelves, and not leave ſo weighty a buſineſſe to the truſt of their Clarks, or other to doe it.

They are to hold the witneſſes to the point inſiſted on.

They ſhould examine them but to one Interrogatory at a time, and ſee that anſwered firſt, and at one time.

They are to take what comes from them in anſwer to what they are examined, and not upon their ſight of all the Interrogatories, to let them ſet it downe themſelves.

After they have been examined, upon better thoughts they may ſuffer them to attend their Examinations. They ought not either to aske them idle queſtions beſids the matter of the Interrogatories, nor ſet down impertinent anſwers.

They are to ſet dwon truly their ſayings in Parchment, and that done, they are to ſet their hands to

every Schedule Examination, and ſend them up into the Court as they are taken, with a Certificate.

Where the Commiſſioners meet with any obſtruction in the worke, they muſt certifie that alſo,

After the Commiſſion is duely executed, and they it to be returned up, one of them muſt deliuer it in Court, or they muſt ſend it by one that muſt make Oath that he recived it from one of their hands, and that it was not altered to his knowledge.

If any one of the Commiſſioners commit any miſdemeanour about examination, the party grieved upon Oath of it, may have the Attachment againſt him and cannot have a commiſſion to examine it upon the certificate of the other Commiſſioners.

Where there is a diſagreement of the Commiſſioners, or where there is any other ſpeciall cauſe that obſtructs the Commiſſion, they may have an Examination ſent down on purpoſe to do it: See *Caries Reports*, 30. 31. 40. 47. 80. *Tothil* 189.

The Interrogatories to examine Witneſſes muſt be ſucciſe and apt.

When Witneſſes are examined in Court upon a Schedule of Interrogatories, you cannot examine the ſame Witneſſes upon putting in new Interrogatories

Witneſſes may be examined as well by Examiner in Court (in caſe they live in or neer the Towne) as by Commiſſioners in the country

Either party, as well *Plaintiff* as *Defendant*, after anſwer put in, untill publication be paſt, may examine what Witneſſes they pleaſe in Court, and after publication, no Examination will be allowed, but by ſpeciall Order, ſome ſpeciall cauſe being ſhewed.

Notice

Notice muſt be given both of the names and dwelling places of the perſons examined, in all caſes of Examination.

After an order for publication, and that delivered to the Examiner, no witneſſe may be examined in Court, though he where ſworn before: *Caries* Reports, 27. 58. 93. *Tothill* 189. 190, 192.

Touching Depoſition of Witneſſes.

NO abſtract, or copy of the Depoſition of the VVitneſſes, is to be delivered till publication be paſt.

No depoſition of witneſſes may be ſuppreſſed upon a bare Petition only, without reference and certificat upon it.

VVhere there are ſeverall Cauſes which are meerly croſſe Cauſes between the ſame parties, and touching the ſame matter, there the Depoſition of Witneſſes in the ſeuerall cauſes may be uſed at the hearing of both cauſes (being heard together) without any motion.

VVhere Depoſitions are regularly taken, they may not be ſuppreſſed by motion; but the Depoſitions of VVitneſſes appearing to this Court to be gotten by practice, may by order of the Court be ſuppreſſed: Depoſition of VVitneſſes taken in this Court, may by Order of the Court be made uſe of in any other Court: *Caries* Reports, 35. 56 collection of Chancery Orders.

Hee that will examine Witneſſes (*in perpetuam rei memoriam*) to preſerve a teſtimony, hee muſt firſt exhibite his Bill, and ſhew his title to the thing, and that the witneſſes to prove it are old, and not like to live long, whereby he is in danger to looſe it, and

then pray a Commiſſion to ſome Gentelman of credite in the country to examine them, and a *Subpœna* to the parties intereſted, to ſhew cauſe if they can to the contrary.

If the party intereſted being duly ſerved within 14. dayes ſhew cauſe, the *Plaintiff* muſt deſiſt; if he can not, he may go on alone, if the other will not ioyne with him, as he may if he will, and then 14. dayes warning is to be given for Execution.

The Court in this caſe will appoint Commiſſioners, and give Articles to examine upon, or they may be examined in court by an examiner.

None but aged and impotent perſons may be examined upon this commiſſion.

Where the *Defendant* takes exceptions to the Proceedings in ſpeeding the commiſsion, as whether he did appear or not, and whether Oath were made before them of notice given to him of the time and place of Execution thereof, in ſuch caſe the Commiſsioners muſt certifie up with the Commiſsion the exceptions the Defendant ſo took.

This Teſtimoney taken upon this commiſsion, is not to be publiſhed while the Witneſſes live; but in ſome caſes, as either by conſent of the parties, or upon Oath made, that either the Plaintiff hath ſome triall at Law, wherein he ſhall need it, and that the Witneſſes are not able to come to the place, or otherwiſe by order of the Court, and then the Commiſsion is to be opened by a Maſter, and to be conſidered of, and afterwards it may, if the party will be exemplified, and may by order of this Court be given in Evidence in any other Court.

Theſe Depoſitions thus taken, ſhall not be made uſe of to be given in Evidence againſt any other, but the Defendant who was warned to defend it, his heir or Aſſignes, or ſome other claiming by, or under him

by ſome Intereſt which accrued unto him, after the Bill preferred: *Tothil* 189, 191, 192.

Where both *Plaintiff* and *Defendant* have examined what Witneſſes they pleaſe, and are ready to go to hearing, then either of them muſt firſt give the other a Rule for publication; if it be the *Plaintiff* that gives the Rule, then thus (Day is given to the *Defendant* of publication upon the Commiſſion joyned) and if the *Defendant* give the Rule, then on the contrary thus (Day is given to the *Plaintiff* for publication upon the Commiſſion joyned.)

The day ſo given is one week, which being expired, and no cauſe ſhewn to the contrary, then publication is granted.

After Publication ſo granted, neither party can examine Witneſſes, unleſſe it be by ſpeciall order of the Court, which is not granted without an Oath made, that the party which requireth the ſame, nor any of them hath ſeene, or been made privy to any Examinations of any the Witneſſes formerly examined in this Court by either of the parties, and ſome good cauſe be ſhewn either by Oath or Certificate of Commiſſioners, why the party could not get his ſaid Witneſſes examined within the time limited for their examination; In which caſe ſomtimes the Court giveth Order to examine VVitneſſes by a time prefixed, with the proviſo, that the party ſhall not in the mean time ſee the ſaid former *Examination*.

Touching

Touching ſetting downe the Cauſe for hearing.

AFter Publication had, the *Plaintiff*, or in his neglect, the *Defendant* may procure a day of hearing of courſe to be ſet down by his Clark at the end of the Term, when the Lords Commiſſioners doe ſet down dayes for hearing the next Term.

The dayes muſt be ſet downe according to their Priority of Publication.

No Cauſe muſt be preſented for hearing, the ſame Term that Publication doth paſſe.

All Proceſſe to hear Judgments muſt be returnable ſix or ſeven dayes before the day of hearing, except it be in the beginning of the Term, when the time will not beare it; and the Writ muſt have on the back of it the very day of hearing.

If the *Plaintiff* appear not, the *Defendant* is to be diſmiſſed whith coſts: *Caries* Reports 45. collection of Orders in Chancery.

Touching Decrees take theſe enſuing Rules.

EVery Decree muſt be drawn up as ſhort as with convenience it may, and not recite the Pleadings largely, but the ſum of it briefly.

If the Decree be made before the Maſter of the Rolls, or before any Judges, it being drawn, muſt be firſt ſigned by them, and after by the Lords Commiſſioners, and then it muſt be Inrolled.

The Decree muſt be ſigned and Inrolled before the firſt day after the next *Michaelmas*, or *Eaſter* Tearm after the making of it. VVhere

Where the Decree concerns Lands or Leaſes, it muſt be entred into the Regiſters Dockquet Booke, within ſixe moneths after the making of it, otherwiſe it ſhall not prejudice the Purchaſors of the Land.

No decree ſhall be binding to any but thoſe who are ſerved with proceſſe, *Ad audiendum judicium*, or that did appear *Gratis*.

The purchaſor that comes in by conveyance, *Bona fide*, from the *Defendant* before the Bill exhibited, and that is no party by Bill or Order, ſhall not be bound up by any Decree.

But where a man becomes a Purchaſor (*Pendente lite*) and without any colour of privity, or allowance by the Court, there it ſhall regularly binde him; yet in ſuch caſe, if there have been any intermiſſion of the Suit, or the Court be acquainted with the conveyance, the Court is to give order in it.

No Decree made by this Court can be croſſed, altered, or explained upon a bare Petition only, and yet hereby it may for ſome ſpeciall reaſons be ſtayed for a while, till it can be moved in Court.

A Decree of this Court once inrolled cannot be reverſed or altered but by a Bill of Review, unleſſe it be in caſe of miſcaſting, where the caſe is demonſtrative, and then it may be done by order.

A Decree will bind the perſons, for where any doe refuſe to obey it, this Court will impriſon him untill he doe conforme

A Decree of this Court doth bind the right and title to Lands and Goods; for this Court by their order of Sequeſtration and Iniunction doth diſpoſe of the poſſeſſion thereof for ever to him the Court iudgeth to have right thereunto in conſcience.

VVhere a decree is to be made upon a pretence

of

of Equity againſt the Judgment of another Court, this Judgment is firſt read, and then the Decree is not to vacuate the Judgment, but to order the unreaſonable party.

The courſe of the Court to inforce Obedience to their Decrees, and to puuniſh the Breach of them.

FIrſt, they are to ſerve the party with the Decree it ſelfe, under the Seale of the Court: and if he yeeld not obedience unto, but ſtands obſtinate, they then proceed to take out of the Court all the Proceſſes of contempt againſt him one after another, and the party being taken, is to be ſtraitly impriſoned, and not to be ſet at liberty till he yeeld obedience to it (that is to ſay) That hee performe that part of the Decree which is preſently to be done, and give ſecurity to performe that part which is to be done for the future.

Alſo the Lords Commiſſioners for his contempt may Fine him what they pleaſe, and afterwards Extreat.

VVhere the Decree is for Land, and the party remaine obſtinate and willfull after his impriſonment, the Court doth uſe to grant an iniunction for the Poſſeſſion; and this being diſobeyed after it is ſerved and Oath made thereof, the Court doth in that caſe grant a commiſſion to ſome Juſtices, and if need be, a Writ of Aſſiſtance to the Sheriff, to put him in poſſeſſion: See *Caries Reports*, 23. 34. 36. 37. *Tothill* 56 & 57 *Collection* of *Orders in Chancery.*

VVhere this Iniunction is granted for poſſeſſion of the Land, and the party ſets out all the Proceſſe of

of contempt, and cannot be found by the Serjeant at Armes, or make a Reſcue, a Sequeſtration ſhall be granted of the Land, *Tothill* 107.

This Sequeſtration is granted ſomtimes as well of the Goods, as of the Profits of a mans Land, and that for his wilfulneſſe in ſtanding out in contempt, and diſobedience to the Court; as well where it is for diſcharge and payment of Debts and duties, as where the Decree is for the payment of a ſumme of money, *&c. Tothill* 175, 176.

Concerning Contempts.

IN caſe of contempts upon force, or ill words uſed upon ſerving of proceſſe, or other words of ſcandall to the Court, if they bee proved by *Affidavit*, the Party forthwith upon motion will be committed, if the words ſpoken deſerve it.

For other contempts againſt the Orders and Decrees of the court, take as followes.

Firſt An Attachment goes forth upon *Affidavit* made of the contempt.

Then the Party being taken is to be examined upon Interrogatories, which is uſually upon motion referred to one of the Maſters in the Chancery.

The contemptor coming in *Gratis*, or upon Proceſs, ſhould give notice to the clark of the other ſide of his appearance; and if then there be not Interrogatories put in within eight dayes, or being examined, if no reference bee of the Examination, or commiſſion taken out by the other ſide, nor VVitneſſes examined to prove the contempt in a Moneth: The contemptor ſhall be diſcharged, and ſhall recover coſts, taxed by a Maſter without any Motion.

I

If after he hath appeared upon the contempt, he depart not examined, hee muſt ſtand committed till he be examined and cleered; and if it be found, he muſt cleer it, and pay coſts ere he be diſcharged.

Such as ſtand committed for contempts upon Attachments, or Commiſſions of Rebellion, muſt enter into Bond to attend from day to day, not to depart without leave of the Court: *Caries* Reports, 9. 44. 70, 71. 82. *Collection of Chancery Orders.*

Impriſonment upon contempts for matters paſt, may be diſcharged of Grace, after ſufficient Impriſonment, or it may be otherwiſe diſpenſed withall in ſuch caſe.

But where the Impriſonment is for non-performance of any Order of the Court in force, then the perſon ſo in contempt ought not to be diſcharged, except the firſt obey, only the Court may diſpenſe with the contempt for a time.

Concerning Bills of Review.

A Bill of Review ſhall not be admitted, except the Decree be firſt obeyed and performed.

No Bill of Review ſhall be put in, except the party that prefers it enter into a Recognizance with Sureties for the ſatisfying of coſts and damages for the delay, if it be found againſt him.

Where a Cauſe is diſmiſſed upon full hearing, and the diſmiſſed ſigned and inrolled, it cannot be retained again but by a Bill of Review, and that in ſome ſpeciall caſes.

No Bill of Review is grantable but upon Errour in Law, appearing in the Body of the Decree it ſelf, without auerment or further examination of any

any matter of Fact which might have been had at the time of the Decree, unleſſe he ſhew ſome new matter which hath riſen in time after the Decree, whereof the *Plaintiff* could not have advantage of before: and then upon Oath made that there is a diſcovery of ſuch new matter, this Bill (by leave of the Court) may be exhibited.

But hee that ſo obtaineth this Bill muſt firſt give ſecurity by Recognizance to a Maſter, as is before directed.

Where the Decree is to yeeld the poſſeſſion of Land, deliver Writtings, or to pay Money, he muſt firſt perform that before a Bill of Review: But if the Decree be to extinguiſh a right, convey Land, releaſe a Debt, acknowledge ſatisfaction, or to cancell Records of Evidences, or the like, it may be ſtayed by the order of the Court, till the Bill of Revivor be determined.

No witneſſes which either were, or might have been examined upon the former Bill, ſhall not upon this Bill of Revivor be examined to any matters: *Colleſion of Orders in Chancery*: Tothill 173.

Having now gone through the generall proceedings of Chancery upon Bill and Anſwer, there are ſome things which in ſome Caſes are eſſential to thoſe Proceeds, which take as follow: and firſt concerning Injunctions.

THis is looked upon according to the generall acceptation, as that which makes ſtay of Proceedings at Common Law, although in many caſes it is likewſe

likewiſe to the end to gaine the poſſeſſion of Land in ſome caſes it proceeds, and in ſome caſes it is ſubſequent to the decree; and ſometimes by writing, and other times by word of mouth as when the party who is to be inhibited, is preſent in court.

Where it ſtaies proceedings at Law, in ſome caſes it gives leave to go to triall and Judgment, but ſtayes Execution.

Where the matter of Law is tried, it barres them from Judgment as the caſe may be.

Or where there is a Judgment, and that executed, it wil ſtay the money in the ſherifs hands, after the party is arreſted at Law for the money.

This iniunction is commonly procured either upon ſome writing, or matter of Record plainly appearing; or upon a very old debt that hath ſlept long, Creditor and Debtor being both dead; or in ſuch caſes where the Defendant doth not appear, but ſits an Attachmment, or if he appears, either anſwers not the Bill, or confeſſes ſo much thereof as is ſufficient.

Where either the Defendant is beyond the Seas or being in the kingdome, doth abſent himſelfe, ſo that he cannot be ſerved, or where upon any pretence he hath gotten time to anſwer, the Court doth uſually in thoſe caſes grant an iniunction to ſtay ſuit, till the Defendant doth appear.

where there is a Commiſſion granted to take an anſwer in the Country, an iniunction will be granted to ſtay the Defendants ſuit at Law, (if any be) till the anſwer come in, and of this the Defendant muſt take notice without any ſerving of it.

VVhere there is a Verdict at common Law in an Action of Debt, and a Bill be afterwards exhibited for Releife, here the money muſt be depoſited in Court, before the court will grant an iniunction, unleſſe in ſome

ſome caſes where ſome ſpeciall matter in Equity appeares by the Defendants anſwer, or in ſome former Decree.

Where a perſon priviledged in this Court is ſued elſe where, he may ſtay that Suit by this iniunction.

Where Timber is unjuſtly felled; Ancient Meadow ground plowed up, ancient paſtures that have not been plowed up in twenty yeares before, or for the maintenance of incloſures kept in for 20 yeares before, there it is grantable according to the caſe.

VVhere an iniunction is granted to quit a poſſeſſion, it is granted of houſes and Land onely, and not of a Rent or ſuch like thing, and it is not to be granted before the hearing of the cauſe, unleſſe upon oath, that the Plaintiff was in poſſeſſion at the time of the Bill put in, and then onely of that poſſeſſion he had then, and three yeares before and at the time of the motion, and not to be extended to the poſſeſſion of thoſe from whom the claimes: And this ſhall not hinder the Defendants Suit in Law, making of a Leaſe, taking of Diſtreſſe, *&c.* And this iniunction where the Plaintiff delayes his Suit is to be diſſolved again.

VVhere it is to ſtay or remove a Suit by *Certiorare*, Bond muſt firſt be given that the Bill hath matter ſufficient in it to bear it, and ſhall be proved true within fourteen dayes after he hath the VVrit; and this if he do not in this time, after a certificat of his neglect from the Examiners, it ſhall be diſmiſſed with coſts, and a *Procedendo* granted.

VVhere the iniunction is to be obtained by motion for matter in the anſwer, there the Counſell muſt put the caſe in writing to the Court.

VVhere it is granted upon the merit of the cauſe, or upon ſpeciall cauſe in Equity, it is to ſtand till the hearing, unleſſe the Plaintiff delay his Suit.

This iniuncton muſt be ſerved either on the

party himſelfe, his Counſellor, Attorney, or Solli-citor, &c. as the caſe requires, and the manner of the ſerving it is much like the ſerving of a *Subpœna*.

A bare petition only will not diſſolve this injunction, nor if it be had by motion is it to be diſſolved without motion of the adverſe party.

VVhere an injunction is granted till the anſwer be put in, and no order be made to continue it, within fourteen dayes after the anſwer is come in; in this caſe it ſhall be diſolved upon the Regiſters certificat thereof only; and if no motion be made that Tearm, or at the next generall ſeale after the Tearm; to continue it for inſufficiency of, or matter confeſſed in the anſwer, it is diſolved of courſe; ſo where it is to ſtay a Suit at common Law, and the plaintiff doth not proceed for three years together.

VVhere the injunction is diſobeyed (if you would force obedience thereunto) upon Oath made thereof, all the Proceſſes of contempt are to go out againſt him, one after another, and being taken, he is to be impriſoned till he doe yeild Obedience to it or give ſecurity to doe it; nor is he to be heard in the Principall caſe, till he yeild Obedience in every thing in the Injunction, *Tothill* 107. *Caries Reports* 112, 113.

Touching diſmiſſion, take theſe things following.

THis is prayed by motion, and had upon Plea to the Bill, or hearing of the Caſe, and not after Examination of witneſſes before hearing, but upon a diſcontinuance of proſecution, by motion and order of the court VVhere

Where the Plaintiff diſcontinues his proſecution after all the Defendants have anſwered, above the ſpace of one Term, the cauſe is to be diſmiſſed of courſe, but after a Replication put in, it cannot be diſmiſſed without an Order upon motion.

Where a cauſe is diſmiſſed upon a full hearing recorded and certified by the Lords Commiſſioners it cannot be againe retained, nor a new Bill admitted, but where there is new matter.

Where the Bill is duly diſmiſſ of courſe, or by order, no motion will be heard to retaine it, till the coſts aſſeſſed upon the diſmiſſion be paid, and certified from the Attorney on the other ſide, that it is done.

No diſmiſſion, or Retainer upon a diſmiſſion will be granted upon bare petition only.

In caſes of diſmiſſion not upon a full hearing, to a new Bill this may be pleaded.

But for the cauſes of Diſmiſſion, the court will retaine and diſmiſſe as it doth ſee cauſe: See Collection of Chancery Orders, *Caries Reports* 34. 43. 74. 76. 110.

Touching References, and Reports, take as followes.

WHere there is a Demurrer to the Juriſdiction of the Court, there no Reference may bee had to a Maſter upon it, but it muſt be heard before the Lords Commiſſioners themſelves.

After Examination of Witneſſes is paſt, there can bee no reference had to a Maſter to end and determine, unleſſe it be in caſe of neer kinne, poverty, or conſent of parties.

A reference of the State of the caſe is ſparingly granted, unleſſe where there is conſent of the parties.

the Examination of Court Rolls is to be by reference, but there it muſt be to two Maſters at the leaſt.

No reference ſhall be made of the inſufficiency of an Anſwer, without allegation of ſpeciall cauſes: See the collection of Chancery Orders

The Reports of the Maſter upon the Reference muſt not exceed the warrant of Reference, which is the Order of Court by which it is referred to him.

After the Maſter hath ſeen the Order, he uſually grants out a Warrant, which is ſhewen unto the other ſide, whereby he gives notice of the time of his hearing the Cauſe, where the other ſide with their Councellor, or Solicitor, may as they ſee cauſe attend.

The Report it ſelfe is uſually briefe, and with ſome opinion, if the caſe be not very doubtfull, and if ſo then it muſt be ſet forth the ſpeciall Caſe.

Neither can be had to confirme the Report, till it be confered with the Regiſter, under the Maſters hand, and a day given to the other ſide, for ſeven dayes at the leaſt, to ſpeak to it in Court; and yet where it is not to ground a Decree, and it be poſitive, it is to ſtand, and Proces may be taken out for the performance thereof, unleſſe the adverſe party upon notice thereof, do within eight dayes after (if it be in the Term time) or if the generall Seals for motions, or if after within four dayes of the beginning of the next Term, get it controlled.

Where there is an appeale to the Court from the Report of a Maſter, the party that doth ſo appeale, muſt depoſite forty ſhillings with the Regiſter, and a day will be ſet for the Judgment of the Court, and

if

if the Court do adiudge it againſt the Appealor, the other ſhall have the forty ſhillings, and what more the Court ſhall iudge fit; if otherwiſe, the money ſhall be reſtored. See collection of Chancery Orders.

The matters chiefly under reference, are either inſufficient Anſwers, or matters of account.

Where the Maſter upon a reference to him reports the Anſwer to be inſufficient, the Complaynant may take out two *Subpena's* againſt the Defendant, the one for twenty ſhillings Coſts, and the other to make a better Anſwer.

Touching Orders, and the Regiſter that draws them.

THe Regiſters being ſworn do ſit in Court, and take notice of all Orders the Court doth make, and take ſhort Notes in their Booke, by which to draw up ſome more full Rememberance of that which paſſed in Court.

Where any Order ſhall be made, and the Court not informed of the laſt materiall Order, formerly made, no benefit ſhall be taken by ſuch Order as being ſurruptitiouſly procured, and to that end the Regiſter doth mention the laſt former Order in the preſent Order.

An Order made out of the generall rule, muſt ſet down the ſpeciall reaſons of it

No order ſhall be explained by Petition, but by publick motion, both parties being heard.

No Order but finall Orders and Decrees may bee received to be entred after eight dayes after the pronouncing of it, that day being excluded.

The Regiſter is to keep copies of the Orders hee

doth deliver, and his hand is to be put to the Order before it be entred.

The Regiſter after a hearing, and Reference to a Treaty is to ſet downe in the Order of Reference, what was the Opinion of the Court, unleſſe the Court do direct it to be drawn otherwiſe.

All Orders drawn up by the Regiſter are to bee entred under the Regiſters hand in due time.

The Regiſter is within ten daies after the end of every Tearme to certifie the Commiſſioners, what References depend in the hand of any Maſter, and how long they have depended, that ſo if any of them have depended overlong, the Court may require an account thereof from the Maſter, and quicken him to a ſpeedy diſpatch.

Touching Suits in Forma Pauperis.

THE counſell and Attorney aſſigned for *Paupers* may not refuſe, but muſt attend their Buſineſſe, unleſſe they ſhew cauſe to the Court, why they cannot ſo do.

They muſt alwaies have their Order of admiſſion with them, and firſt move that, before any other motion; and it hinders not, but that they may, if they have any other motion, make it afterward.

Where the Regiſter finds that he is not a *Pauper*, hee ſhall not draw up any Order upon the ſecond motion; but the *Pauper* ſhall looſe the Fruite of it.

Noe Counſellour, Attorney, or Officer of the Court appointed to be for a *Pauper* by the Court is to take any thing of, or contract for any thing with him, and the *Pauper* that can bee proved ſo to have

have given or contracted, is to be dis-paupered for euer.

If a *Pauper* sell, or contract for his Suit, or any part of it, his Bill shall be dismissed, and never after retained.

Noe processe of contempt shall go out for a *Pauper* untill it be signed by the sixe Clarks, who deale for him, and he must see there be cause for it.

The course to obtaine the Admission is by way of Petition, either to the commissioners of the great Seal, or to the Master of the Rolls, who underscribe it, the Party having made Oath that he is not worth five Pounds, and assignes him counsell and Attorney.

His Admission must be shewen in the severall Offices, where he hath occasion to passe

Touching petitions, for the avoiding of the multitude, of idle ones, drawn by persons altogether ignorant of the practise and course of the court, or the true state of the Petitioners business, it is directed, that Petitions before they bee presented to the commissioners of the great Seale, or Master of the Rolls bee shewed to that sixe clark, who is the Petitioners Attorney in court, or to this Deputy, and by him approved and subscribed; and for this no Fee is to be taken; but this not to be understood of Petitions advised, and signed by counsell: Nor of Petitions containing any matter of complaint against the Attorney, or his under clark.

Touching Affidavits.

Affidavits are most generally made before Masters of the chancery, but where it is for the ser-

ving of a *Subpæna*, they are ſometimes taken and certified by others.

An *Affidavit* may not be taken againſt an *Affidavit*, for if it be, the latter is not to be uſed.

An *Affidavit* ought not to be taken tending to the proofe or diſproofe of the matter in queſtion: Nor may any ſuch matter be admitted, to be colourably inſerted into any Oath made of the ſerving of proceſſe: See more to this purpoſe, *Caries Reports* 63.69. 81.82.84.85 98.99.103.

The way of proceeding againſt a priviledged Perſon.

A Declaration againſt a priviledged man for Debt, or any thing whereof the Court holdeth Plea, is to be delivered to one of the ſixe Clarkes, whom the Plaintiff maketh his Attorney, and hee thereupon giveth a day (as it is commonly tearmed) which is a week, (*viz.* the whole next return) to the Defendant to anſwer, which day is entred in the ſix Clarks Coſts Book in this manner, (*Roberts* againſt *Johnſon*) A Day is given from the day of Saint *Michale* in one Moneth, in a Plea of priviledge.

Day being thus given, the Declaration under the Attorneys hand is ſent over to the Petty Bag, by one of the ſaid Attorneyes Clarks, which Declaration is briefly entred by one of the Clarks there, and likewiſe the day that is giuen to the Defendant to anſwer in a Roll there, which is called *Rotulum remembranc. Parvæ bagæ*; At which day by the courſe of the common Law, if the Defendant plead not, hee is fore-Judged the court, but the courſe of the Chancery hath been of late to allow the Defendant a day of

of Imparlance, that is, day till the next return after the return given him to anſwer, which is in this manner.

the Defendant retaineth one or other of the ſix Clarks, who i parleth for him, which is done in the ſix Clarks coſts Book in this manner, (*Roberts* againſt *Johnſon*) Imparlance untill the Morrow of all-Soules, at which day it is ſent over to the petty-bag, to bee entred into the aforeſaid Roll next under the ſaid Declaration.

The ſaid day of imparlance being paſt, another day, *Videlicet*, commonly five daies in a week (which is commonly called a peremptory day) is given by the Plaintiffs Attorney and entred in the petty-bag as aforeſaid, to the Defendant to plead, or elſe Judgment is to be entred againſt the Defendant.

If the Defendant plead, his Plea is delivered by his Attorney to his Plaintiffs Attorney, and then if the Plaintiff will proceed to a Tryall, he is to joyne up the *Iſſue* (if he may, jor in ſome caſes he cannot) or elſe the Plaintiff is to reply, and to give the Defendant a day, *viz.* a whole Terme to joyne up Iſſue which is given and entred as the day to anſwer: And if the Defendant by that day joynes not up the Iſſue, Judgment is entred up by *Nihil dicet*, and it is to be noted, that after a peremptory day given, the Defendant cannot pray *Oyer* of the Bond and Condition, or ſuch like, as of late is uſed for a meer delay: But if the Iſſue be joyned up, either by the Plaintiffe or Defendant, then is the Record made up, and the ſame with a *Venire facias* is ſent in to the Kings Bench to be tryed, as an action there at Iſſue, and upon Judgment there, Execution is thereupon there awarded.

But if the Defendant refuſe or neglect to imparle at the day given him to anſwer or to plead, for hee may

may plead at that day if he will, then is Judgment entred againſt him, and Execution awarded.

Upon Judgment either by default, or *Nihil dicit*, ſome of theſe VVrits of Execution are awarded; if for debt, the Plaintiff may have an *Elegit* by *Weſtminſt.* 2. *Chap.* 18 or elſe a *Levari facias*, or *Fieri facias*: and if the Plaintiff cannot levie his Debt and Damages, then he ſhall have a *Capias ad ſatisfaciendum*, either for all, or ſo much as reſteth unſatisfied.

The Judgment being ſatisfied, the Plaintiff by himſelfe or his Attorney (if the Defendant do deſire it) doth acknowledge ſatisfaction upon the Judgement in the Petty-Bag Office.

It is to be noted, that whatſoever day is given by any of the ſix Clarks, and by them entred in their Booke, worketh nothing, if the ſame be not entred in the Petty-Bag.

The courſe uſed, where the priviledged Perſon ſues.

THE Defendant being Arreſted by an Attachment of Priviledge, at the Suit of a Priviledged man, muſt retaine one of the ſixe clarks to bee his Attorney, and muſt put in Baile to the Plaintiffes Action, according to the courſe of the court, which is, to appear from day to day, until the Plea bee determined, to ſatisfie the Plaintiff all ſuch ſummes of Money as the Plaintiffe ſhall recover againſt him by reaſon of this Suit: Then the Priviledged man putteth in his Declaration, and the proceedings thereupon are the ſame as before, againſt the priviledged man.

By the courſe of the court the Defendant is to put in foure Subſidy men, or ſufficient Sureties (be the

the action never ſo ſmall) as appears betweene *Archibald* and *Burrall*, 23 *Eliz.* wherein the Defendant is bound in four hundred pounds, the ſum of the action, and every Surety in a hundred pounds.

If Judgment be given for a priviledged man in this Court, hee may if he will take out Execution againſt the Defendant as before; but if he will not, then he may take out a *Scire facias* againſt the Defendant and his Manucaptors upon the Baile, whereupon if Iudgment bee had upon the ſaid *Scire facias*, in the Chancery, Execution is awarded as in the former Actions: But if upon Iſſue joyned, and ſent into the Kings Bench, and upon a Tryall there Judgment be given, then is Execution there awarded; and upon ſatisfaction of the Debt and Damages, the Baile is to be diſcharged, upon the acknowledgment of ſatisfaction, as before.

If either the Plaintiffe or Defendant upon a Declaration of Priviledge, or *Scire facias*, Demurre in Chancery the Demurrer being joyned, a day is ſet down by the Lords commiſſioners for arguing thereof before them; and if upon the Argument it fall out to be a *Reſpondeas ouſter*, then Judgment is entred thereupon, and if it be againſt the Defendant, then Execution is awarded, and if againſt the Plaintiff, then it is, That the Plaintiff ſhall take nothing by his Writ, or by the Declaration.

But if it be a *Reſpondeas ultra*, then is the Defendant to pay coſts, and a day given for him peremptorily to plead, or Judgment to be entred, *Practiſe of the Chancery*, 93, 94, 95, 96.

A Table

A Table of Fees due unto the six Clarks, and other the Officers of the Court.

	l	s	d
FOr all first, second, or other Copies of all Bills, Answers, and other pleadings whatsoever, as also of all Certificates and Examiations made or taken, by vertue of any Commission but of this Court, and of the Interrogatories therewith returned, and also of all Declarations, or Proceedings by English Bill, or according to the course of the common Law, and for Copies of Records, Rolls, or Evidences, brought in to be copied, or remaining in the said Court for every Leafe of Paper containing fifteen lines.	0	0	8
For the Inrolling of all VVarrants whereby any Patents, Commissions, Licenses, Pardons, Leases, or other Grants whatsoever, do passe by and under the great Seale, after the rate of every Skinne so passing the great Seale.	0	2	0

For the inrolling of all Warrants for all Commissioners for the Peace, for Goale delivery, for a Liberty for *Oyer* and *Terminer*, for Piracies, for the preservation of the Game of the Swans, and for the Commissions for Inquiry sued out for the benefit of any private person, for every of the sayd Commissions 0 - 1 - 8

For

For the inrolling of all Warrants for all Commiſſions of appeale, and for the admiralty, for every one of them, 0--4.

For the Inrollment of every warrant for every ordinary licenſe, or pardon of Alienation, 0-3--4

But if it be of more then ordinary length, then according to the length after the rate of 20s the skin, and not above.

For the Inrolling of all warrants for all Commiſſions in the nature of Writs, of *Diem clauſit extremum, mandamus, Ideota probanda, Lunaticis inquirend. Melius inquirend.* for every of them, 3 4

For the inrolling of the warrants, for every patent or grant of the coſtody of any Ward, 8 8

For the inrolling of the warrant for every preſentation, Donation, or Revocation, to any Rectory, Vicaridge, Deanry, Arch-deconry, Chancellor-ſhip, Treaſurer ſhip, or Dignity, to any Metropoliticall, Cathedrall or collegiate Church, or for any Cannon ſhip, or Prebend, in any of the ſaid Churches, or for the Maſterſhip in any Hoſpitall or other Eccleſiaſticall living, or for the grant of any preſentaion or preſentaions, *pro unica vel pluribus, vicibus* thereunto 3 4

For the inrolling of the Warrants for every, *Mandamus ad iuſtalland.* 3-4

For the inrolling of all Warrants for all Licenſes for wines, for every life 3 4

Or ſuch Fee not exceeding that proportion, as by the Commiſſioners ſhall be ſet down, formerly they paid although granted for three lives 6 8

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Of every Client for every Tearm whilſt his Cauſe dependeth undetermined, by decree or by diſmiſſion the termly Fee of 0-3-4

If there were twenty Plaintiffs or more in one bill they all pay but one Fee for one Tearm, 0-3-4

But for every three Defendants, accounting the Husband and the Wife but for one perſon, there is due for their firſt appearance 0-3-4

And upon the firſt appearance if every Defendant appears ſeverally by himſelfe, hee is to pay the Fee of three ſhillings foure pence, but every Tearm afterwards during the continuance of the cauſe, there is only the Fee of three ſhillings foure pence the Tearm to be paid for all the Defendants that appeared in any Term or vacation, in the ſame cauſe.

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